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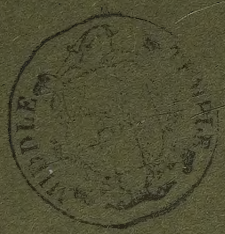

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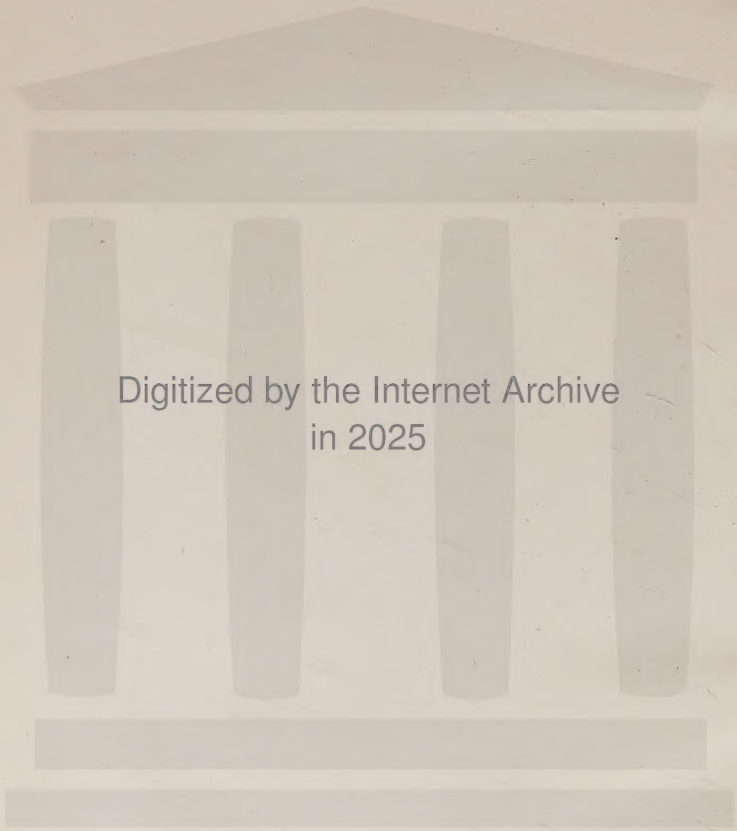
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SUPPLEMENT

TO THE

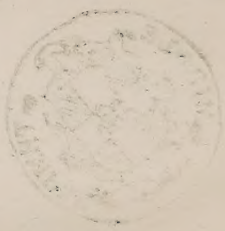
FOURTH EDITION

OF

BYTHEWOOD AND JARMAN'S

CONVEYANCING.

Oct 31st 1893.



SUPPLEMENT

TO THE

FOURTH EDITION

BY

LEOPOLD GEORGE GORDON ROBBINS,

OF

BYTHEWOOD AND JARMAN'S

CONVEYANCING.

By

THE EDITOR

AND

ARTHUR TURNOUR MURRAY,

BOTH OF LINCOLN'S INN, BARRISTERS-AT-LAW.

LONDON:

SWEET AND MAXWELL, LIMITED, 3, CHANCERY LANE,

Law Publishers.

HODGES, FIGGIS, & CO., AND E. PONSONBY, DUBLIN;

MEREDITH, RAY, & LITTLER, MANCHESTER;

C. F. MAXWELL, MELBOURNE & SYDNEY.

1893.

LONDON:
BRADBURY, AGNEW, & CO. LD., PRINTERS, WHITEFRIARS.

PREFACE.

The main object of this Supplement is to bring the Fourth Edition of Bythewood and Jarman's Conveyancing up to date.

The publication of this edition, which consists of seven volumes extended over six years (1884 to 1890), so that a period of nearly ten years has elapsed since the publication of the first volume, and some important modifications in the dissertations and notes, and occasionally in the precedents, have been rendered necessary by the statutes passed and the cases decided during this period.

The ground covered by the original work and by subsequent editions is so extensive that almost every case and statute of any importance to the conveyancer will be found somewhere therein referred to, and accordingly it is hoped that this volume by itself may be of some value, not only as a Supplement to "Bythewood and Jarman's Conveyancing," but also generally as a guide to recent case-law and legislation.

Incidentally some corrections which appeared to be material have been made, but, as a rule, mere typographical errors have been passed over.

An attempt has been made to insert a reference to all material decisions which have been reported up to the 1st July, 1893, including cases which are not reported in the Law Reports, and to all material statutes which were passed before that date.

It is hoped that with the assistance of the marginal notes and of a somewhat copious index any point referred to may be found without much difficulty.

L. G. GORDON ROBBINS.
A. TURNOUR MURRAY.

August, 1893.

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ERRATA.

Page 47, line 9. *For* "repealed by the Statute Law Revision Act, 1887," *read* "amended by the Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21)."

„ 189, line 27. *For* "5 & 6 Will. IV. c. 32," *read* "6 & 7 Will. IV. c. 32." This Act was repealed by the Building Societies Act, 1874 (37 & 38 Vict. c. 42). Sect. 42 of the later Act corresponds with sect. 5 of the earlier Act.

„ 214, line 2. *For* "25 & 26 Vict. c. 27," *read* "25 & 26 Vict. c. 17." So much of s. 5 of the stat. 9 Geo. II. c. 36 as relates to the acquisition of advowsons by colleges other than those of Oxford and Cambridge was left unrepealed by the stat. 51 & 52 Vict. c. 42.

„ 248 *ad fin.* The Hawkers Act, 1888, only repeals s. 35 of the stat. 6 Geo. IV. c. 81. The section (s. 2) cited at p. 229 of Vol. IV. appears to be still in force.

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SUPPLEMENT

TO

Bythewood and Jarman's

PRECEDENTS IN CONVEYANCING.

ABSTRACTS.

PRELIMINARY DISSERTATION.

Statutes of Limitations.

Meaning of "rent."

P. 7, note (*h*).—The term "rent" in stat. 3 & 4 Will. IV. c. 27, includes tithe rent-charge: *Irish Land Commission* v. *Grant*, 10 App. Cas. 14; also copyhold quit-rents: *Howitt* v. *Earl of Harrington*, W. N. 1893, p. 66.

City of London tithes.

P. 8, line 2.—Payments imposed in lieu of tithes in the City of London under the stat. 37 Hen. VIII. c. 12, are "annuities" or "periodical sums of money" within this section: *Payne* v. *Esdaile*, 13 App. Cas. 613.

Relinquishment of possession by intruder.

P. 9, note (*n*).—The Act ceases to apply where the adverse holder has relinquished possession. There is no difference in this respect between mines and other land: *Agency Co.* v. *Short*, 13 App. Cas. 793, P. C.

Running of time against administrator.

P. 10, note (*s*).—Time for the purposes of the stat. 3 & 4 Will. IV. c. 27, runs from the death of the person whose estate or interest is claimed by an administrator not from the grant of administration: *Re Williams, Davies* v. *Williams*, 34 Ch. D. 558.

Adverse possession

P. 11, note (*t*).—Title by adverse possession for 12 years

by railway company.

(see stat. 37 & 38 Vict. c. 57, s. 1) may be acquired of land of a railway company although it is required for the purposes of the undertaking, and is not superfluous land: *Bobbett* v. *S. E. Rail. Co.*, 9 Q. B. D. 424.

Receipt of rents by agent for heir.

P. 11, note (*x*).—Where an agent receives rents on behalf of a person who dies intestate and afterwards continues to receive the rents, without authority from the heir, such receipt will not bar the heir's right of action to recover the land as against the agent claiming the property on his own account, if the action is brought by the heir within a reasonable time after his heirship is ascertained: *Lyell* v. *Kennedy*, 14 App. Cas. 437. See also *M'Auliffe* v. *FitzSimons*, 26 L. R. Ir. 29.

Person wrongfully claiming.

P. 11, note (*y*).—As to who is a "person wrongfully claiming to be entitled" within s. 9 of the stat. 3 & 4 Will. IV. c. 27; see *Laybourn* v. *Gridley*, 40 W. R. 474.

Acts of ownership.

P. 12, note (*a*).—Add reference to *Norton* v. *L. & N. W. Rail. Co.*, 13 Ch. D. 268, C. A.

Tenants in common.

P. 13, note (*c*).—As to adverse possession by a tenant in common as against his co-tenants, see *Re Hobbs*, *Hobbs* v. *Wade*, 36 Ch. D. 553.

Irish Church Commissioners.

P. 17, note (*p*).—Adverse possession under s. 29 of the stat. 3 & 4 Will. IV. c. 27, does not apply to the Commissioners of Irish Church Temporalities: *Irish Land Commission* v. *Grant*, 10 App. Cas. 14.

Arrears of interest.

P. 20, note (*x*).—Sect. 42 of the stat. 3 & 4 Will. IV. c. 27, does not affect the right of a mortgagee to retain more than six years' arrears of interest out of the proceeds of a sale effected under this power: *Re Marshfield*, *Marshfield* v. *Hutchings*, 34 Ch. D. 721. This section does not apply to interest in respect of any sum of money other than a legacy charged upon or payable out of personalty: *Mellersh* v. *Brown*, 45 Ch. D. 225, and cases there cited.

Acknowledgment of debt.

P. 20, note (*z*).—After *Toft* v. *Stephenson*, add *Re Hollingshead*, *Hollingshead* v. *Webster*, 37 Ch. D. 651: *Firth* v. *Slingsby*, 58 L. T. 481.

P. 22, note (*d*).—After *Forsyth* v. *Bristowe*, add *Dibb* v. *Walker*, W. N. 1893, p. 51.

Possessory title.

P. 23, note (*e*).—In *Games* v. *Bonnor*, 33 W. R. 64, C. A., the Court of Appeal held that the effect of this section is to enable a vendor who has only 12 years possessory title to

force such title on a purchaser: see also *Groves* v. *Loomes*, 53 L. T. 592; 34 W. R. 94.

Repeal of 53 Geo. III., c. 127, s. 5.

P. 23, note (*h*).—The stat. 53 Geo. III. c. 127, s. 5, is repealed by the Statute Law Revision Act, 1887 (50 & 51 Vict. c. 59), except as to tithes, offerings and compositions which have not been commuted or otherwise not payable.

Void lease.

P. 23, note (*i*).—In the case of a void lease, the statute runs from the last payment of rent: *Webster* v. *Southey*, 36 Ch. D. 9. See *Eccl. Commrs.* v. *Treemer*, [1893] 1 Ch. 166.

Equitable charge on reversionary interest.

P. 23, note (*k*).—Time begins to run for the purpose of barring a foreclosure action in respect of an equitable contingent charge on a reversionary interest in land only from the time when the interest falls into possession: *Hugill* v. *Wilkinson*, 38 Ch. D. 480. See also *Re Hancock*, *Hancock* v. *Berrey*, W. N. 1888, p. 138, 59 L. T. 197, 36 W. R. 710.

Alienation of particular estate.

P. 24, line 14.—As to the effect of the alienation of a particular estate, see *Pedder* v. *Hunt*, 18 Q. B. D. 565, C. A.

Sale of infant's interest with notice.

P. 25, line 1.—Where real estate, held in undivided shares, one of which was vested in trustees for the benefit of an infant, was sold to a purchaser for value with notice of the infant's interest, it was held that the infant was not barred, although more than 12 years had elapsed between the sale and the attainment of full age by the infant, and although the purchaser had been in uninterrupted possession since the sale: *Young* v. *Harris*, 65 L. T. 45.

Infant tenant in tail.

As to the time at which the right of an infant tenant in tail by descent accrues for recovery of land, see *Murray* v. *Watkins*, 62 L. T. 796.

Money charged on land, &c.

P. 28, note (*s*).—As to an annuity charged on land, see *Dower* v. *Dower*, 15 L. R. Ir. 264. And, as to the time at which the statutory period of 12 years begins to run as regards a charge on land in respect of expenses incurred by a local authority, see *Hornsey Local Board* v. *Monarch Investment Building Society*, 24 Q. B. D. 1, C. A.

P. 28, note (*t*).—The decision of *Fry*, J., in *Harlock* v. *Ashberry* (18 Ch. D. 229), was reversed by the Court of Appeal (19 Ch. D. 539), who laid down that the principle underlying all the statutes of limitation is that a payment, to take a case out of the statute, must amount to an acknowledgment by the person making the payment of his liability, and of the

title of the person to whom the payment is made. See *Newbould* v. *Smith*, 33 Ch. D. 127, C. A., affirmed on other grounds, 14 App. Cas. 423. See also *Hugill* v. *Wilkinson*, 38 Ch. D. 480. But this rule must apparently be qualified, so as to include any person who by the terms of the mortgage contract is entitled to make payments: *Lewin* v. *Wilson*, 11 App. Cas. 639, P. C.

Bond or covenant by surety for payment of mortgage debt.

Where a surety has given a collateral bond for payment of the mortgage debt and interest, payments of interest by the mortgagor will keep alive the remedy of the mortgagee against the surety: *Re Powers, Lindsell* v. *Phillips*, 30 Ch. D. 291, C. A. It would also seem from this case that money secured by a bond of a surety, by way of collateral security for payment of a mortgage debt, is not money charged on land within s. 8 of the stat. 37 & 38 Vict. c. 57, but rather an indemnity against the non-payment by another person of a sum of money which he has charged on land. See also, as to a covenant by a surety contained in the mortgage deed, *Re Frisby, Allison* v. *Frisby*, 43 Ch. D. 106, C. A.

Mortgagor and mortgagee the same.

Where the beneficial interest in a mortgage debt and in the mortgaged land are united in the same person, the statute will not run though the interest is payable to one set of trustees and the rents to another set of trustees and no interest has in fact been paid for more than 12 years: *Topham* v. *Booth*, 35 Ch. D. 607.

Judgment creditor.

P. 28, note (*u*).— After *Watson* v. *Birch*, add *Manby* v. *Manby*, 3 Ch. D. 101: *Re Greaves, Bray* v. *Tofield*, 18 Ch. D. 551.

Meaning of word "judgment."

The word "judgment" in s. 8 of the Real Property Limitation Act, 1874, means judgments generally, and not merely judgments charged upon land: *Hebblethwaite* v. *Peever* [1892], 1 Q. B. 124: *Jay* v. *Johnstone*, [1893] 1 Q. B. 189, C. A.

Executors.

P. 30, line 17.—Add *Re Smith, Henderson-Roe* v. *Hitchins*, 42 Ch. D. 302.

Accruer of right to receive legacy.

P. 30, line 27.—As to the time at which a "present right to receive" a legacy "accrues" under s. 40 of the stat. 3 & 4 Will. IV. c. 27 (for which s. 8 of the stat. 37 & 38 Vict. c. 57, is now substituted), see *Binns* v. *Nichols*, L. R., 2 Eq. 256, 260.

Presumption of death.

P. 36, line 33.—As to presumption of death at a particular

time, add *Re Rhodes*, *Rhodes* v. *Rhodes*, 36 Ch. D. 586; *R.* v. *Tolson*, 23 Q. B. D. 168.

Express trusts.

P. 41, line 33.—A mere constructive trust will not prevent the Statutes of Limitation from being a bar. So a suit to recover a legacy from an executor is within the stat. 37 & 38 Vict. c. 57, s. 8, unless the legacy is vested in him on express trusts: *Re Davis, Evans* v. *Moore*, [1891] 3 Ch. 119, C. A. A mortgagee who has been paid, but has not re-conveyed, is not a trustee within sect. 25 of the stat. 3 & 4 Will. IV. c. 27: *Sands to Thompson*, 22 Ch. D. 614, where *Fry*, J., cited with approval the decisions in *Doe* v. *Rock*, and *Drummond* v. *Sant*, cited Vol. I. p. 32. A solicitor investing his client's money in a particular mortgage, or generally if the security is approved by the client, does not thereby become a trustee so as to prevent an action for negligence from being barred: *Dooby* v. *Watson*, 39 Ch. D. 178. See further as to express trusts: *Hughes* v. *Coles*, 27 Ch. D. 231; *Re Blachford, Blachford* v. *Worsley*, 27 Ch. D. 676; *Patrick* v. *Simpson*, 24 Q. B. D. 128; *Re Stephens, Warburton* v. *Stephens*, 43 Ch. D. 39; *Re Rowe, Jacobs* v. *Hind*, W. N. 1889, p. 161, 61 L. T. 58, C. A.; *Re Swain, Swain* v. *Bringeman*, [1891] 3 Ch. 233; *Re Davis, Evans* v. *Moore*, [1891] 3 Ch. 119, C. A.; *Re Barker, Buxton* v. *Campbell*, [1892] 2 Ch. 491.

The question as to express trusts has lost much of its importance by reason of the provisions of the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8, which enables trustees, except in cases involving fraud, to plead the Statute of Limitations. This section is set out in full, *sub tit.* SETTLEMENTS, Vol. VI. pp. 355, 356. As to the effect of this section, see *Re Bowden, Andrew* v. *Cooper*, 45 Ch. D. 444; *Moore* v. *Knight*, [1891] 1 Ch. 547; *Re Swain, Swain* v. *Bringeman*, [1891] 3 Ch. 233.

Concealed fraud.

P. 44, line 17.—As to what constitutes concealed fraud, see further, *Lawrance* v. *Norreys*, 15 App. Cas. 210; *Willis* v. *Earl Howe*, W. N. 1893, p. 71, 41 W. R. 433, C. A.

Laches.

P. 44, last line.—Add *Allcard* v. *Skinner*, 36 Ch. D. 145, C. A.

Tithes.

P. 49, note (*i*).—Payments imposed in lieu of tithes by 37 Hen. VIII. c. 12 are not a "render of tithes in kind" within s. 1 of the stat. 2 & 3 Will. IV. c. 100: *Payne* v. *Esdaile*, 13 App. Cas. 613. See also *Irish Land Commission* v. *Grant*, 10 App. Cas. 14.

Commencement of Abstract.

Specific performance.

P. 55, note (*n*).—After *Jones* v. *Clifford*, add *Best* v. *Hamand*, 12 Ch. D. 1, C. A.: *Nottingham Patent Brick and Tile Co.* v. *Butler*, 16 Q. B. D. 778, C. A.

Suppression of incumbrances.

P. 56, note (*p*).—See *Drummond* v. *Tracy*, observed upon by *Hall*, V.-C., at the end of his judgment in *Re Solomon & Davey*, 10 Ch. D. 366, note. See also *Re Cox and Neve's Contract*, [1891] 2 Ch. 109.

Title under old lease.

P. 58, *ad fin.*—The rule as here expressed was cited with approval by *Kekewich*, J., in *Williams* v. *Spargo*, W. N. 1893, p. 100.

Production of lessor's title to easement.

P. 58, note (*s*).—In *Jones* v. *Watts*, 43 Ch. D. 574, C. A., the Court of Appeal held that an agreement to grant an easement for a term of years during a lease was within s. 2 of the Vendors and Purchasers Act, 1874, and that the freehold title could not be called for.

Repeal of 32 Hen. 8, c. 28.

Pp. 59, 60.—The stat. 32 Hen. VIII. c. 28, is repealed as to leases, other than ecclesiastical leases, by s. 35 of the stat. 19 & 20 Vict. c. 120.

Leasehold reversion.

P. 61, *ad fin.*—After *Stranks* v. *St. John*, add *Gosling* v. *Woolf*, [1893] 1 Q. B. 39, better reported 41 W. R. 106.

Contents, Form and Arrangement of Abstract.

Expenses of furnishing abstract.

P. 63, line 13.—The word "abstract" in s. 3 (6) of the Conveyancing Act, 1881, does not include the proper abstract of title extending over the last 40 years, or such less period as may have been specified in the contract, the expense of which must still be borne by the vendor, although the particular title deeds are not in his possession: *Re Johnson & Tustin*, 30 Ch. D. 42, C. A. See also as to what expenses must be borne by the vendor and purchaser respectively: *Re Moody & Yate's Contract*, 30 Ch. D. 344, C. A.; *Re Willett & Argenti*, W. N. 1889, p. 66, 60 L. T. 735; *Re Ebsworth & Tidy's Contract*, 42 Ch. D. 23, C. A.

Scale of charges.

P. 63, line 19.—The old scale of 6*s.* 8*d.* per eight folios is still in force as regards the perusal of abstracts: *Re Parker*, 29 Ch. D. 199. See also *Re Robertson*, 19 Q. B. D. 1.

Imperfect abstract.

P. 65, line 7.—Add *Want* v. *Stallibrass*, L. R. 8 Ex. 175.

Award how far conclusive.

P. 66, line 9.—Where land, which belonged to another,

was inadvertently allotted under the Inclosure Acts, it was held that the award was not conclusive of the title of the allottee, and had been improperly made: *Jacomb* v. *Turner*, [1892] 1 Q. B. 47.

Presumption of enfranchisement.

P. 75, line 10.—Where land shown to have been originally held as copyhold had been enjoyed for more than 100 years as freehold, without any claim for fines, &c. having been made on the part of the lord of the manor during that period, it was held by *Kay*, J., that an enfranchisement must be presumed, and that a vendor who had contracted to sell the land as freehold could not be compelled by the purchaser to obtain an enfranchisement: *Re Lidiard & Jackson's Contract*, 42 Ch. D. 254.

Pews.

P. 75, line 23.—As to prescriptive right to pews, add *Phillips* v. *Halliday*, [1891] A. C. 228.

Misrepresentation.

P. 76, line 28.—Add *Re Davis & Cavey*, 40 Ch. D. 601; *Re Fawcett & Holmes*, 42 Ch. D. 150, C. A.

Assignment of debt.

P. 78, note (*j*).—After *Brice* v. *Bannister*, add *Western Wagon & Property Co.* v. *West*, [1892] 1 Ch. 271, in which it was held that a contract to make further advances creates no debt, and that, even if assignable under s. 25 (6) of the Judicature Act, 1873, such assignment gives the assignee no greater right than the assignor had.

Tithe rent-charge.

P. 80, note (*o*).—As to whether tithe rent-charge can properly be said to be charged on land: see *Payne* v. *Esdaile*, 13 App. Cas. 613, 622. And as to tithe rent-charge generally: see The Tithe Act, 1891 (54 & 55 Vict. c. 8).

Land tax.

A railway tunnel is a hereditament chargeable with land tax: *Metropolitan Rail. Co.* v. *Fowler*, [1892] 1 Q. B. 165, C. A.

Erasures, &c., in deeds.

P. 88, note (*t*).—Add *Re Sykes*, L. R. 3 P. & D. 26.

Evidence to verify Abstract.

Mortgagee's liability to produce deeds.

P. 92, line 25.—Add *Bank of New South Wales* v. *O'Connor*, 14 App. Cas. 273 at 283, P. C.

Inquiry as to option to purchase reversion of leaseholds.

P. 94, line 13.—If the vendor is a tenant for life selling under his statutory powers property which is let on lease the purchaser should ascertain whether the lease gives to the lessee an option to purchase: see the Settled Land Act, 1889 (52 & 53 Vict. c. 36), sect. 2, set out *sub tit.* Settlements, *post*, p. 322.

Inquiries of trustees.

P. 96, *ad fin.*—As to inquiries where property is vested in trustees: see *sub tit.* MORTGAGES, Vol. III., pp. 953 *et seq.*, and *post*, pp. 200, 201.

Inquiry as to widow's legitim.

P. 97, line 10.—Where the abstract shows that an owner of the property has died intestate after the 1st September, 1890, inquiry should be made as to whether he left a widow, and if so it should be ascertained that her statutory provision of £500 has been paid to her, as otherwise it will be wholly or partially a continuing charge on the real estate of the intestate: see Intestate Estates Act, 1890 (53 & 54 Vict. c. 29).

Inquiry as to settlement.

P. 97, note (*b*).—Where a purchaser is dealing with a married woman it will be prudent to enquire whether any settlement affecting the property was made on her marriage. But he is not bound so to enquire, see *Lloyd's Banking Co.* v. *Jones*, 29 Ch. D. 221.

Searches for land charges.

P. 99, *ad fin.*—Searches for drainage and land improvement loans and other land charges must now be made at the office of Land Registry: see *post*, pp. 10 *et seq.*

Judgments.

P. 102, line 31.—After *Benham* v. *Keane*, add *Badeley* v. *Consolidated Bank*, 38 Ch. D. 238, C. A.; *Re Bell, Carter* v. *Stadden*, W. N. 1886, p. 46, 54 L. T. 370, 34 W. R. 363.

P. 104, line 5. — As to priorities of judgment creditors *inter se*, where some have omitted or delayed to re-register within five years, see *Re Lord Kensington, Bacon* v. *Ford*, 29 Ch. D. 527.

P. 104, *ad fin.*—As to the validity of a charging order under the stat. 1 & 2 Vict. c. 110, s. 14 and 3 & 4 Vict. c. 82, s. 1, when the judgment debtor is a lunatic, see *Horne* v. *Pountain*, 23 Q. B. D. 264: *Re Leavesley*, [1891] 2 Ch. 1, C. A. And as to the meaning of the words "standing in his name, in his own right," in s. 14 of the stat. 1 & 2 Vict. c. 110, see *Cooper* v. *Griffin*, [1892] 1 Q. B. 740, C. A.

Repeal of County Registry Acts.

P. 121, line 8.—Sect. 19 of the Middlesex Registry Act, 1708 (7 Anne, c. 20) is repealed by the Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64) and by sect. 6 of the last-mentioned Act it is enacted that it shall not be necessary for the validity of any judgment, statute, or recognizance that a memorial thereof be registered under the Middlesex Registry Act, 1708.

Registration of judgments in Middlesex unnecessary.

Registration of judgments, &c., in Yorkshire.

All the old Yorkshire Registry Acts are repealed by the Yorkshire Registries Act, 1884 (47 & 48 Vict.), c. 54.

By s. 4 of the Act of 1884, all "assurances" (including in that expression any "order of a Court," see s. 3), may be registered in the manner prescribed by the Act, and by s. 14, assurances are to have priority according to the date of their registration.

See further as to county registries *post sub tit.* REGISTRY.

Lis pendens.

P. 123, *ad fin.*—After *Berry* v. *Gibbons*, add as follows:—A creditor's administration action, where real estate is charged with debts, is a *lis pendens* which, if registered, gives priority to the creditor over a purchaser or mortgagee, except in the case of a sale or mortgage to pay debts: *Price* v. *Price*, 35 Ch. D. 297.

Protection of *bonâ fide* transactions without notice.

P. 127, line 9.—Sect. 45 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), has been inadvertently inserted in this place instead of s. 49, which enacts as follows:—

49. Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy—

(*a.*) Any payment by the bankrupt to any of his creditors.

(*b.*) Any payment or delivery to the bankrupt.

(*c.*) Any conveyance or assignment by the bankrupt for valuable consideration.

(*d.*) Any contract, dealing, or transaction by or with the consent of valuable consideration.

Provided that both the following conditions are complied with, namely—

(1.) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

(2.) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Erratum.

P. 127, line 34.—Instead of the words "whether they have notice of it or not," read "unless they have notice of it."

Arrears of annuity.

P. 127, *ad fin.*—After *Francis* v. *Grover*, add *Cunningham* v. *Foot*, 3 App. Cas. 974.

Land Charges Registration and Searches Act, 1888.

Land Charges Registration and Searches Act, 1888.

Pp. 99 to 128.—The remarks contained in these pages with regard to searches must now be read in connection with the provisions of the Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), which has introduced considerable alterations into the law in this respect.

Commencement and extent of Act.

This Act, which does not extend to Scotland or Ireland (s. 3), came into operation on the 1st January, 1889, and established three registers to be kept at the office of Land Registry (34, Lincoln's Inn Fields, London), viz.: (1.) a register of writs and orders affecting land (s. 5 (1)). (2.) a register of deeds of arrangement affecting land (s. 7), and (3.) a register of land charges (s. 10).

Protection of purchaser for value.

In order to protect a purchaser for value, including in this expression "a mortgagee or lessee or other person who for valuable consideration takes any interest in land or in a charge on land" (s. 4), it will be necessary to search these three registers, but the necessity for other searches is by no means superseded, as will appear from the following statement of the Act. As regards the registration of writs and orders affecting land, s. 5 enacts as follows:—

Register of writs and orders affecting land.

(1.) There shall be established and kept at the Office of Land Registry a register of writs and orders affecting land, and there may be registered therein, in the prescribed manner, any writ or order affecting land issued or made by any court for the purpose of enforcing a judgment, statute, or recognizance, and any order appointing a receiver or sequestrator of land.

(2.) Every entry made in pursuance of this section shall be made in the name of the person whose land is affected by the writ or order registered.

(3.) The registration of a writ or order in pursuance of this Act shall cease to have effect at the expiration of five years from the date of the registration, but may be renewed from time to time, and, if renewed, shall have effect for five years from the date of the renewal.

(4.) Registration of a writ or order in pursuance of this section shall have the same effect as, and make unnecessary, registration thereof in the Central Office of the Supreme Court of Judicature in pursuance of any other Act.

Meaning of land.

The word "land" in this Act, includes "lands, messuages, tenements and hereditaments, corporeal and incorporeal of any tenure." (Sect. 4.) Equitable interests in land are not here

expressly mentioned, and it may be doubtful whether they are intended to be included. The stat. 27 & 28 Vict. c. 112, s. 2, on the other hand, expressly defines "land" for the purpose of that Act as including "any interest therein."

Meaning of judgment.

The word "judgment" in this section includes any order or decree having the effect of a judgment other than an order made by a Court having jurisdiction in bankruptcy (s. 4).

Crown debts.

Crown debts and writs of execution by the Crown are not mentioned in the Act. It is therefore obvious that besides searching the office of the land registry, it is still necessary in appropriate cases to search for Crown debts. The necessity for searches in bankruptcy is not affected by the Act.

Regulations as to registration of writs and orders.

With regard to the manner of registration of writs and orders affecting land, rule 1 of the general rules made 1st January, 1889, for the purpose of carrying the Act into effect prescribes that "the register of writs and orders shall contain:—(*a*) The name, address and description of the person whose land is affected. (*b*) The date and nature of the writ or order, and the Court, by and in which the writ or order was issued or made. (*c*) The date of registration, and of any renewal of registration. (*d*) The name and address of the applicant or of the solicitor, if any, making the application."

Whether "land" includes equitable interests in land.

Having regard to the omission to include in the definition of land equitable interests therein, it does not appear clear to what extent the search should be carried as regards names of persons (see s. 5 (2)). If the land is subject to successive legal limitations the search must of course be made in the names of the tenant for life and also of the remainder-man, but if the legal estate is vested in trustees it will be well to search in the land registry office in the names not only of the trustees, but also of the beneficiaries, on the assumption that the Act applies to equitable interests, and also, on the contrary assumption, to search the register of judgments at the central office in the names of the beneficiaries, such register not being abolished although in some measure superseded by the provisions of this Act (see s. 5 (4) and s. 6).

As to the effect of not registering a writ or order, s. 6 enacts as follows:—

Protection of purchasers against non-registered

Every such writ and order as is mentioned in section five, and every delivery in execution or other proceeding taken in pursuance of any such writ or order, or in obedience thereto, shall be

writs and orders.

void as against a purchaser for value of the land unless the writ or order is for the time being registered in pursuance of this Act.

Provided that—

(*a.*) where the writ or order is at the commencement of this Act registered in pursuance of the Act of the session held in the twenty-seventh and twenty-eighth years of Her Majesty, chapter one hundred and twelve, intituled "An Act to amend the law relating to future judgments, statutes, and recognizances," nothing in this section shall affect the operation of such writ or order until the expiry of the period for which it is so registered;

(*b.*) where the proceeding in which the writ or order was issued or made is for the time being registered as a *lis pendens* in the name of the person whose land is affected by the writ or order, nothing in this section shall affect the operation of such registration.

What amounts to a delivery in execution.

An order for the appointment of a receiver has been held to amount to a delivery in execution within the meaning of the stat. 27 & 28 Vict. c. 112, *Re Pope*, 17 Q. B. D. 743, in which case it was decided that the order did not require registration except for the purpose of obtaining a summary order for sale. Now, however, such an order will of course require registration under the recent Act. See s. 5 (1), (*ante*).

Effect of non-registration.

Non-registration renders writs and orders void only as against purchasers for value of the land but does not prevent the land being bound as against the debtor himself or other persons who do not come within the definition of "purchaser for value." See s. 4 (*ante*).

Searches under 27 & 28 Vict. c. 112.

Under the stat. 27 & 28 Vict. c. 112, the period of registration was five years, on the expiration of which, judgments, &c., might be re-registered for a further like period (see s. 3 of that Act and stat. 23 & 24 Vict. c. 38, s. 4). The effect of proviso (*a*) is to render effectual the registration of writs and orders registered under the stat. 27 & 28 Vict. c. 112, until the expiry of the current period of registration or re-registration. It will therefore still be necessary until the expiration of five years from the commencement of the recent Act, viz. until the 31st December, 1893, to make what have hitherto been regarded as the usual searches for judgments, &c., at the Central Office.

The effect of proviso (*b*) is to continue the necessity for

searching for any *lis pendens* as hitherto, and to render unnecessary the registration under the recent Act of any writ or order issued or made in any proceeding which is for the time being registered as a *lis pendens*.

Search for *lis pendens* not superseded.

It was held that there was no jurisdiction to vacate the registration of a writ or order affecting land under this Act: *Cook* v. *Cook*, 15 P. D. 160. But by s. 19 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69), it is enacted that "The registration of a writ or order affecting land may be vacated pursuant to an order of the High Court or any Judge thereof."

Power to vacate registration of writ.

With regard to the registration of deeds of arrangement the Land Charges, &c., Act, 1888, enacts as follows:—

Sect. 7. A register (in this Act called the register of deeds of arrangement affecting land) shall be kept at the Office of Land Registry, and deeds of arrangement may be registered therein, in the prescribed manner, in the name of the debtor.

Register of deeds of arrangement affecting land.

Sect. 8. A deed of arrangement may be registered in the register of deeds of arrangement affecting land on the application of a trustee of the deed, or of a creditor assenting to or taking the benefit of the deed, and the registration may be vacated pursuant to an order of the High Court of Justice or any judge thereof.

Registration of deeds of arrangement.

Sect. 9. Every deed of arrangement, whether made before or after the commencement of this Act, shall be void as against a person who, after the commencement of this Act, becomes a purchaser for value of any land comprised therein or affected thereby, unless and until such deed is registered in the register of deeds of arrangement affecting land: Provided that nothing in this section shall affect any deed of arrangement made before the commencement of this Act until the expiration of one year from the commencement of this Act if registered within that year.

Protection of purchasers against unregistered deeds of arrangement.

By s. 4 it is enacted that a deed of arrangement shall have the same meaning as in the Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), see s. 2 of that Act set out *post*, p. 79, *sub tit.* Compositions. By the Land Charges Rules, 1889, the register of deeds of arrangement shall contain:— (*a*) the name, address, and description of the person whose land is affected. (*b*) The date of the deed and the names of the parties, provided that where the creditors are numerous it shall not be necessary to specify more than three. (*c*) The date of registration. (*d*) The name and address of the applicant or of the solicitor (if any) making the application.

Meaning of deed of arrangement.

Regulations as to deeds of arrangement.

No period is mentioned in the foregoing sections within

Period of search.

which the search for deeds of arrangement may be limited. The search for such deeds must apparently be made to extend back to the commencement of the register.

As to the registration of land charges the Act enacts as follows :—

Registry of land charges.

10. A register, in this Act called the register of land charges, shall be kept at the Office of Land Registry, and land charges may be registered therein in the prescribed manner :—

(1.) In the case of freehold land, in the name of the person beneficially entitled to the first estate of freehold at the time of the creation of the land charge :

(2.) In the case of copyhold land, in the name of the tenant on the court rolls at the time of the creation of the land charge.

Provided that where the person by or on behalf of whom the application was made pursuant to which the land charge was created was beneficially entitled to a lease for lives or a life at a rent or to a term of years the land charge shall be registered also in the name of that person.

Definition of land charge.

By section 4 of the Act land charge is defined to mean "a rent or annuity or principal moneys payable by instalments, or otherwise, with or without interest charged, otherwise than by deed, upon land, under the provisions of any Act of Parliament, for securing to any person either the moneys spent by him or the costs, charges, and expenses incurred by him under such Act, or the moneys advanced by him for repaying the moneys spent, or the costs, charges, and expenses incurred by another person under the authority of an Act of Parliament, and a charge under the thirty-fifth section of the Land Drainage Act, 1861, or under the twenty-ninth section of the Agricultural Holdings (England) Act, 1883, but does not include a rate or scot."

Charges under the Land Drainage Act, 1861, s. 35, and under the Agricultural Holdings Act, 1883, s. 29, are here specially mentioned, inasmuch as charges thereunder may be by way of gross sums not payable by instalments and are therefore not within the definition of a land charge given by the Land Charges, &c., Act, 1888.

Meaning of "beneficially entitled."

The words "beneficially entitled" in sect. 10 (1) apparently include equitable owners of the freehold. Messrs. Elphinstone and Clark express an opinion (Appendix to treatise on Searches, p. 21), that the term includes persons entitled to the rents and profits of land held under a trust for sale. It is, however, somewhat difficult to see how such persons can be said to be entitled to an *estate* in land or to anything more

than an interest in money arising out of land. See *Re Thomas, Thomas* v. *Howell*, 34 Ch. D. 166, a case under the Dower Act (3 & 4 Will. IV. c. 105), where *Kay*, J., laid much stress on the distinction between the expressions "estate in land" and "interest in land." It will be observed that the definition of "land" does not expressly include an equitable interest in land.

Land charges by leaseholder.

The meaning of the proviso at the end of the section would seem to be that if a leaseholder creates a land charge (which under some Acts may continue beyond the expiration or other determination of his term), registration in the name of the person beneficially entitled to the first estate in freehold, or of the tenant on the Court rolls (as the case may be) will not be sufficient to validate the charge unless it is also registered in the name of the lessee who created the charge.

Expenses.

By sect. 11, the expenses of registering a land charge created before the commencement of the Act are to form part of the land charge and to be recoverable accordingly.

Regulations as to registration of land charges.

By the Land Charges Rules, 1889, the register of land charges shall contain:—(*a*) the name, address, and description and capacity (that is to say whether: (i.) beneficially entitled to the first estate in freehold: (ii.) tenant on the Court rolls; or (iii.) beneficially entitled to a lease for lives or a life at a rent or for years) of the person in whose name the registration is made; (*b*) the date of the charge, the statute under which it is made, and the parish in which the land charged is situated; (*c*) the date of registration; (*d*) the name and address of the applicant or of the solicitor, if any, making the application.

Protection of purchasers against unregistered charges.

Sect. 12. A land charge created after the commencement of this Act shall be void against a purchaser for value of the land charged therewith, or of any interest in such land, unless and until such land charge is registered in the register of land charges in the manner mentioned in this Act.

Period of search for land charges.

No period being mentioned for duration of registry of land charges, search will for some time to come have to be carried back to the commencement of the register. Land charges are usually payable by instalments extending over a period of about 30 years, so that as regards such charges a search for that period would ultimately be sufficient in ordinary cases, but inasmuch as under certain Acts, charges requiring registration may be made by gross sums not so payable (see

ante), a search for that period will not render a purchaser safe. The search should be made in the names of all persons capable of being entered on the register under sect. 10, and it will not be sufficient as in the case of writs and orders to stop at the last purchaser for value.

Non-registered land charge existing at commencement of this Act.

Sect. 13. After the expiration of one year from the first assignment by act *inter vivos*, occurring after the commencement of this Act, of a land charge created before the commencement of this Act, the persons entitled thereto shall not be able to recover the same, or any part thereof, as against a purchaser for value of the land charged therewith or of any interest in such land, unless such land charge is registered in the registry of land charges in the manner mentioned in this Act prior to the completion of the purchase.

The result of this enactment is that for at least 30 years to come, it will be necessary to search, at the Office of Land Registry, the register of rent charges created under the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), see s. 56 of that Act. See Elphinstone and Clark on Searches, pp. 3, 109, 149—151.

Vacation of entry.

Sect. 14. The registration of a land charge may be vacated pursuant to an order of the High Court of Justice or any judge thereof.

Supplemental provisions.

Part 5 of the Land Charges, &c., Act, 1888, is supplemental. It provides (s. 15) for the keeping of an alphabetical index of entries, which by rule 3 of the Land Charges Rules, 1889, now consist of the registers themselves, the entries therein being made alphabetically. By s. 16 any person may search the register by payment of the fee of one shilling per name, or if an official search is required a fee of five shillings if in one name only; of two shillings for each additional name, and for continuation of official search of one shilling per name. All fees are payable by land registry stamps, which can be obtained at the land registry. Sect. 17 enacts as to official searches as follows:—

Official searches.

17. The provisions as to searches in the Central Office, requisitions, certificates, officers, clerks, persons, and for the protection of solicitors, trustees, agents, and other persons in a fiduciary position contained in the second section to the Conveyancing Act, 1882, except so much of those provisions as relates to the making of general rules, shall apply to searches in any

45 & 46 Vict. c. 39.

register or index kept in pursuance of this Act in the register of *lis pendens*, the register of deeds of arrangement affecting land, and the register of land charges, in the same manner as if this Act had been described in Part I. of the First Schedule to the Conveyancing and Law of Property Act, 1881. 44 & 45 Vict. c. 41.

The provisions of the Conveyancing Act, 1882, above referred to are set out in Vol. I., pp. 110 and 111; and the first schedule to the Conveyancing Act, 1881, is set out at p. 110, note (*e*). It would seem that the words "*lis pendens*" have been inserted by mistake and ought to read "writs or orders," for as we have already seen no register of *lis pendens* is established by this Act. Even when so corrected, the words from "Act" to "land charges" appear to be superfluous.

Sect. 18. The Lord Chancellor may at any time after the passing of this Act, and from time to time, with the concurrence of the Commissioners of Her Majesty's Treasury as to fees, make such general rules as may be required for carrying this Act into effect. General rules.

Certain rules have been issued under this section which (r. 8) may be cited as the Land Charges Rules, 1889. Some of these rules have incidentally been referred to above. Applications for registration, searches (official and otherwise), and official certificates are to be made on forms which may be obtained at the office of Land Registry (rr. 4, 5). Certificates of official searches are to be marked with the stamp of the Search Department of the Land Registry (r. 6).

An important question arises as regards the effect of omitting to register under this Act, as to whether or not a purchaser for value with notice of an unregistered writ or order, deed of arrangement or land charge is affected by such notice. It is to be observed that the recent Act renders unregistered writs or orders (s. 6), deeds of arrangement (s. 9), and land charges (s. 12), *void*, "as against a purchaser for value," and makes no exception in the case of a purchaser for value with notice. A similar question has arisen under other registration Acts, and it has been held that want of registration does not protect a purchaser with notice, see *Le Neve* v. *Le Neve*, 2 Wh. & Tud. L. C. 32, and cases there cited. It remains, however, to be decided whether the equitable doctrine of notice established by these cases would, apart Notice of unregistered charge.

from actual fraud, deprive a purchaser for value of the protection given by this Act. See also *Greaves* v. *Tofield*, 14 Ch. D. 563, in which case the decision of Jessel, M. R., that a purchaser for value with notice was not affected by an unregistered annuity under the stat. 18 & 19 Vict. c. 15, s. 12, was reversed by the Court of Appeal. It will be observed that the language used in that section is very different, and by no means so strong as that used in this Act.

What searches must now be made.

Full searches at the present day would include the following:—

(1) At the Central Office for judgments, *lis pendens* and annuities.

(2) At the Central Office (Bills of Sale Registry) for deeds of arrangement prior to 1889.

(3) At the Office of Land Registry for (*a.*) writs and orders affecting land, (*b.*) deeds of arrangement since 1889, and (*c.*) land charges including those registered under the Act of 1888, and also those registered under the Improvement of Land Act, 1864.

(4) At the office of Land Commissioners (now Board of Agriculture) for charges under the Public Money Drainage Acts.

(5) In bankruptcy.

Enquiries should also be made as to orders appointing receivers (see *ante*, p. 12) made before 1889.

Succession Duty.

Protection of purchasers, &c.

P. 128, line 17.—As to the protection of purchasers and mortgagees by the Customs and Inland Revenue Act, 1889, see *post*, *sub tit.* STAMP DUTIES.

Reversionary interests.

P. 128, line 34.—After *Cooper* v. *Trewby*, add *Re Langham*, W. N. 1890, p. 213; 39 W. R. 156, C. A.

Sale by tenant for life under statutory powers.

P. 128, *ad fin.* and note (*l*).—The view here taken as to the liability to succession duty of land purchased from a tenant for life under his statutory powers, or from trustees under a power of sale exercisable with his consent, has been questioned (see Wolstenholme and Brinton, Conv. and S. L. Acts, p. 265; Dart, V. and P. 6th ed. p. 669). The question, which is not altogether free from difficulty, will be found fully discussed in Vol. VII. pp. 294, 295, *sub tit.* STAMP DUTIES.

Evidence of Pedigree.

P. 133, line 25.—After *Thorp* v. *Owen*, add *Garland* v. *Beverley*, 9 Ch. D. 213. Gift to heirs.

P. 133, *ad fin.*—After *Nanson* v. *Barnes*, add:—In *Moore* v. *Simkin*, 31 Ch. D. 95, by a marriage settlement executed in 1810, real estate of the wife was settled to certain uses which determined or failed, with an ultimate limitation to the use of the right heirs of the wife's mother then deceased for ever; at the date of the settlement the wife was entitled to the estate settled, as to part as heiress at law of her deceased mother, and as to the remainder as one of the coheiresses of a deceased maternal great-uncle: it was held by *Pearson*, J., that the descent was not broken by the settlement, and that under the ulterior limitation the wife took the estate as part of her old estate which she had before the settlement. See this question fully discussed, Jarman on Wills (5th ed. by Robbins), Vol. II. 922 *et seq.*

P. 146, line 16.—Add *De Geer* v. *Stone*, 22 Ch. D. 243. Naturalization.

P. 147, line 4.—As to the operation of the stat. 13 Anne, c. 13, which disables Roman Catholics from presenting to any benefice, see *Boyer* v. *Bishop of Norwich*, [1892] A. C. 417, P. C. Roman Catholics.

P. 149, note (*f*).—This rule as to the admissibility of hearsay evidence is confined to cases where pedigree is in question and does not extend to cases where questions of pedigree incidentally arise: *Haines* v. *Guthrie*, 13 Q. B. D. 818, C. A. Hearsay evidence in matters of pedigree.

P. 150, *ad fin.*—After *Higham* v. *Ridgway*, add *Sturla* v. *Freccia*, 5 App. Cas. 623, 640.

P. 151, line 15.—After *Lloyd* v. *Wait*, add *Re Lambert's Trusts*, 56 L. T. 15.

P. 152, *ad fin.*—As to family reputation in matters of pedigree, see *Miller* v. *Wheatley*, 28 L. R. Ir. 144.

P. 155, line 25.—The rule in *Doe* v. *Vardill* applies only to the case of a descent on intestacy, and not to a devise to "children": *Re Grey's Trusts*, *Grey* v. *Stamford*, [1892] 3 Ch. 88. Legitimacy.

P. 155, *ad fin.*—Add reference to *Hawes* v. *Draeger*, 23 Ch.

D. 173; *The Aylesford Peerage*, 11 App. Cas. 1; *Burnaby* v. *Baillie*, 42 Ch. D. 282; *Re Perton, Pearson* v. *Att.-Gen.*, W. N. 1885, p. 164, 53 L. T. 707; *Re Walker & Jackson*, W. N. 1885, p. 196, 53 L. T. 660, 34 W. R. 95; *Bosville* v. *Att.-Gen.*, 12 P. D. 177.

P. 155, note (*g*).—As to Trinidad, see *Escallier* v. *Escallier*, 10 App. Cas. 312, from which it appears that s. 1 of Ordinance, 1858, applies the English law to all successions of land in Trinidad *ab intestato*, and therefore incorporates the doctrine of *Doe* v. *Vardill* (*supra*) that birth in wedlock is a condition to succession to land in England by inheritance.

Parish registers.

P. 156, line 26.—Scotch parish registers or certified extracts of their contents are admissible in evidence in the English Courts: *Lyell* v. *Kennedy*, 14 App. Cas. 437.

Registry of marriages abroad.

P. 157, line 27.—As to registers of marriages solemnized abroad, see now the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23).

Proof of Writings, &c.

Matters of record.

P. 160, *ad fin.*—Proceedings in a sheriff's court in Scotland are admissible in this country as to matters of pedigree: *Lyell* v. *Kennedy*, 14 App. Cas. 437.

Yorkshire Registry.

P. 161, line 21.—The stat. 8 Geo. II. c. 6 is repealed by the Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54), but the provisions of s. 22 of the repealed Act are virtually re-enacted: see *sub tit.* REGISTRY, Vol. VI., pp. 9 *et seq.*

Foreign law.

P. 163, line 2.—If the evidence refers to passages in a foreign code as containing the law applicable to the case, the Court is at liberty to look at those passages, and to consider what is their proper meaning: *Concha* v. *Murietta*, 40 Ch. D. 543, C. A.

Powers as to oaths and notarial a ts abroad.

P. 164, line 15.—The stat. 18 & 19 Vict. c. 42 is repealed by the Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), and by s. 6 of that Act it is enacted as follows:—

Sect. 6 (1). Every British ambassador, envoy, minister, chargé d'affaires, and secretary of embassy or legation exercising his functions in any foreign country, and every British consul-general, consul, vice-consul, acting consul, pro-consul, and consular agent exercising his functions in any foreign place may, in that country

or place, administer any oath and take any affidavit, and also do any notarial act which any notary public can do within the United Kingdom; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in any part of the United Kingdom.

(2.) Any document purporting to have affixed, impressed, or subscribed thereon or thereto, the seal and signature of any person authorised by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken, or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.

The above section virtually re-enacts the provisions of ss. 1 and 3 of the repealed Act. As to the admission in evidence of affidavits sworn before British ambassadors, &c., in foreign countries, see *Re Magee, Ex parte Magee,* 15 Q. B. D. 332; *Joynt's Divorce Bill,* 13 App. Cas. 741.

P. 164, line 25.—Where, as in Germany, a British consul is not allowed to administer an oath, an affidavit may be sworn before a judge of the country: *Re Fawcus,* 9 P. D. 241.

P. 168, line 14.—As to the recognition in this country of probates and letters of administration granted in British Possessions, see the Colonial Probates Act, 1892 (55 Vict. c. 6). Colonial probates, &c.

P. 171, line 32.—After *Denn* v. *Spray* add *Johnstone* v. *Earl Spencer,* 30 Ch. D. 581. Custom of manor.

P. 172, line 9.—A right by prescription may be shown, although in fact the acts done were done in the belief that there was a custom: *Earl De la Warr* v. *Miles,* 17 Ch. D. 535, 597, C. A. Prescription as regards copyholds.

P. 175, line 19.—After *Bolingbroke* v. *O'Rorke,* add *Fry* v. *Lane,* 40 Ch. D. 312. Title to reversion.

P. 177, line 24.—Instead of "tit. ASSENT" read "tit. SPECIAL INSTRUMENTS," and see Vol. VI., pp. 808—812 in note (*e*), where the subject is discussed at some length. *Erratum.*

ACKNOWLEDGMENTS.

PRELIMINARY REMARKS.

Acknowledgment by Married Woman.

Real estate.

P. 209, line 10.—Insert reference to *Fowke* v. *Draycott*, 29 Ch. D. 996.

P. 209, line 27.—After *Goodchild* v. *Dougal*, add *Tennant* v. *Welch*, 37 Ch. D. 622. The husband's concurrence is effectual, notwithstanding his bankruptcy: *Re Jakeman's Trusts*, 23 Ch. D. 344.

Lunatic.

P. 210, line 7.—The stat. 16 & 17 Vict. c. 70 has been repealed by the Lunacy Act, 1890 (53 Vict. c. 5).

Infant.

P. 210, line 11.—The Court may authorise the acknowledgment by an infant of a settlement on her marriage, omitting from the certificate the words "of full age": *Re Lacey*, 6 Q. B. D. 154.

Base fee.

P. 211, note (*b*).—Where a woman, then a spinster, created a base fee in property limited to her in remainder expectant on a subsisting life estate, and subsequently married after the commencement of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), it was held by *Chitty*, J., that a deed executed by her while under coverture for the purpose of converting the base fee into a fee simple absolute did not require acknowledgment nor the concurrence of her husband: *Re Drummond & Davie's Contract*, [1891] 1 Ch. 524.

Sect. 73 of the Fines and Recoveries Act, which renders acknowledgments before enrolment unnecessary, apparently has no reference to acknowledgments by married women, but seems to refer only to the former practice of acknowledging bargains and sales, &c.: see Vaizey on Settlements, Vol. II., p. 1631; 1 Hayes Conv., 5 Ed., 165.

Erratum.

P. 212, line 5.—The correct reference to the report of *Toler* v. *Slater* is L. R. 3 Q. B. 42.

Exercise of general statutory powers.

P. 212, lines 20 to 26.—The generally accepted view among conveyancers seems to be that acknowledgment is unnecessary in the case of a disposition by a married woman in exercise

of her powers under the Settled Land Acts: see Vaizey on Settlements, Vol. I., p. 215; Hood & Challis, Conv. Acts, 293; and Wolstenholme & Brinton, Conv. & S. L. Acts, 317; but the point is not yet covered by judicial decision.

Husband's right to wife's leaseholds.

P. 213, line 10.—On the principle of the cases here referred to, *Kay*, J., held that a surviving husband was entitled, without administration, to leaseholds to which his wife had been entitled subject to a life estate which was still subsisting at her death: *Re Bellamy, Elder* v. *Pearson*, 25 Ch. D. 620.

Choses in action.

P. 214, line 19.—After *Whittle* v. *Henning* add:—But see as to the effect of the Married Women's Property Act, 1882, in the case of a woman who has married again since the commencement of that Act, *Re Onslow, Plowden* v. *Gayford*, 39 Ch. D. 622.

Erratum.

P. 215, line 18.—For "tit. POWERS," read "tit. APPOINTMENTS;" and see Vol. I., pp. 731 *et seq.*

Contracts with husband.

P. 216, note (*f*).—A husband can sue his wife in respect of a contract entered into by her affecting her separate property: *Butler* v. *Butler*, 16 Q. B. D. 374, C. A.

Separate trade.

P. 217, line 12.—After *Ashworth* v. *Outram*, add *Re Dearmer, James* v. *Dearmer*, W. N. 1885, p. 212, 53 L. T. 905. A married woman is by s. 1 (5) of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), subjected to the bankruptcy laws, but only if she is trading separately from her husband: see *Re Gardiner, Ex parte Coulson*, 20 Q. B. D. 249. As to bankruptcy notice, see *Re Hannah Lynes, Ex parte Lester*, [1893] 2 Q. B. 113, C. A.

Equity to settlement.

P. 219, line 28.—After *Re Suggitt's Trusts*, add *Callow* v. *Callow*, 55 L. T. 154; see also *Roberts* v. *Cooper*, [1891] 2 Ch. 335, C. A.

P. 220, line 3.—After *Re Ford*, add *Boxall* v. *Boxall*, 27 Ch. D. 220; *Reid* v. *Reid*, 33 Ch. D. 220.

Divorce.

P. 223, line 27.—Although when once the decree is made absolute there is a relation back to the date of the decree *nisi* as against her husband, yet this relation back does not extend so as to alter the wife's status as a married woman in that interval, but her disabilities of coverture continue as against third parties; *Norman* v. *Villars*, 2 Ex. D. 359.

P. 224, line 6.—*Re Insole* has been followed in *Re Emery's Trusts*, W. N. 1884, p. 28, 50 L. T. 197, 32 W. R. 357.

Property acquired after separation.

A covenant to settle after-acquired property will not be deemed to bind property to which a separated woman becomes entitled after the date of the decree for separation: *Dawes* v. *Creyke*, 30 Ch. D. 500.

P. 224, line 4.—In *Waite* v. *Morland*, 38 Ch. D. 135, the C. A. decided that s. 25 of the Divorce Act, 1857 (20 & 21 Vict. c. 85), set out at Vol. I, p. 221, does not apply to property to which a separated wife was entitled in possession at the date of the decree for judicial separation. The rule laid down in *Cooke* v. *Fuller* and *Munt* v. *Glynes* must therefore be regarded as applying only to property to which a wife becomes entitled after the decree. See *Nicol* v. *Nicol*, 31 Ch. D. 524, C. A.; *Hill* v. *Cooper*, [1893] 2 Q. B. 85, C. A.

Meaning of "rents and profits" in M. W. P. Act, 1870, s. 8.

P. 225, line 3.—In *Johnson* v. *Johnson*, 35 Ch. D. 345, *Stirling*, J., dissented from the dictum of *Jessel*, M.R., in *King* v. *Voss*, and expressed his opinion that the words "rents and profits" in the Married Women's Property Act, 1870, s. 8, are intended to apply only to such rents and profits as are to be personally enjoyed by the wife; and accordingly he held that the enactment in question does not enable a married woman to pass by an unacknowledged deed the fee simple of real estate coming to her by descent.

Effect of M. W. P. Act 1882, on settlements.

P. 226, note (*i*).—The decision of *Pearson*, J., in *Re Stonor's Trusts* was approved of by the Court of Appeal in *Re Whitaker, Christian* v. *Whitaker*, 34 Ch. D. 227, and the same Court made a similar decision in *Hancock* v. *Hancock*, 38 Ch. D. 78, disapproving of the decision of *Chitty*, J., in *Re Queade's Trusts*, 53 L. T. 74, 33 W. R. 816. See also *Stevens* v. *Trevor-Garrick*, [1893] 2 Ch. 307.

Gift to husband and wife and a third person.

P. 227, note (*j*).—The decision in *Re March, Mander* v. *Harris*, was reversed by the Court of Appeal, 27 Ch. D. 166; but, as in that case the marriage took place in 1864, it is not an authority as regards cases coming within the Married Women's Property Act, 1882; *Cotton*, L.J., however, in that case intimated his opinion that the Act was not intended to alter any rights except those of the husband and wife *inter se*. See also *Re Jupp, Jupp* v. *Buckwell*, 39 Ch. D. 148, where *Kay*, J., held that the rule of construction, whereby, under a gift to a husband and wife and a third person, the husband

and wife take only a moiety, has not been altered by the Act. Of course a different intention may appear by the context of the will: see *Warrington* v. *Warrington*, 2 Hare 54, and see *Re Dixon*, *Byram* v. *Tull*, 42 Ch. D. 306.

Husband's right to curtesy.

As to the husband's right to curtesy since the Act, the view suggested in this note has been re-considered, and a different opinion, to the effect that such right is not affected by the Act, will be found to be expressed in Vol. VI. pp. 365 *et seq. sub tit.* SETTLEMENTS. And, since the publication of that volume, the view there expressed has been judicially affirmed by *Stirling*, J., *Hope* v. *Hope*, [1892] 2 Ch. 336.

Husband's right to wife's personalty on her death intestate.

As to personalty, see *Re Lambert's Estate*, *Stanton* v. *Lambert*, 39 Ch. D. 626, where the view taken in this note, viz., that the effect of the Act is not to exclude the right of the husband, is judicially affirmed.

Accruer of title under M. W. P. Act, 1882.

P. 228, note (*k*).—The view expressed in the text has been judicially affirmed, after much conflict of opinion, by the Court of Appeal in *Reid* v. *Reid*, 31 Ch. D. 402, overruling *Baynton* v. *Collins*, 27 Ch. D. 604; see Vol. VI. p. 137, n. But a mere "spes successionis" is not within s. 5 of the Act: *Re Parsons*, *Stockley* v. *Parsons*, 45 Ch. D. 51.

Restraint on anticipation.

P. 229, line 10.—It has now been decided that a restraint on anticipation prevents a married woman from being put to election: *Re Wheatley*, *Smith* v. *Spence*, 27 Ch. D. 606: *Re Vardon's Trusts*, 31 Ch. D. 275, C. A.

P. 229, line 13.—The principle of the rule on the point here referred to laid down in *Pike* v. *Fitzgibbon*, is apparently still in force, notwithstanding the Married Women's Property Act, 1882: see *Myles* v. *Burton*, 14 L. R. Ir. 258; see also *Stanley* v. *Stanley*, 7 Ch. D. 589.

P. 229, *ad fin.*—In *Musgrave* v. *Sandeman*, 48 L. T. 215, it was ordered that a married woman should be separately examined as to her assent to a compromise, the effectuation of which would render necessary a removal by the Court of her restraint on anticipation, see also *Harris* v. *Harford*, W. N. 1888, p. 190. See further as to the considerations which may influence the Court as to the exercise of its discretion in removing the restraint, *Ex parte Thompson*, W. N. 1884, p. 28; *Re Jordan*, *Kino* v. *Picard*, W. N. 1886, p. 6, 54 L. T. 127, 34 W. R. 270; *Re Currey*, *Gibson* v. *Way*, W. N.

1887, p. 28, 56 L. T. 80, 35 W. R. 326; *Re C.'s Settlement*, 56 L. T. 299; *Re Segrave's Trust*, 17 L. R. Ir. 373; *Re Tippett & Newbould's Contract*, 37 Ch. D. 444, C. A.; *Re Millar*, 25 L. R. Ir. 107; *Re Little, Harrison* v. *Harrison*, 40 Ch. D. 418, C. A.; *Re Milner's Settlement*, [1891] 3 Ch. 547; *Re Tennant's Estate*, 25 L. R. Ir. 522.

Exercise of special statutory powers.

P. 230, line 14.—The general power of disposal given to married women by the Act of 1882 does not extend to dispositions by them under powers exercisable by them with the concurrence of their husbands under earlier statutes for special purposes, so as to dispense with the necessity of such concurrence in the exercise of such powers: *Re Smith's Estate, Clements* v. *Ward*, 35 Ch. D. 589.

Legal estate in realty settled to separate use.

P. 231.—In connexion with the remarks contained on this and parts of the following pages, reference should be made to the case of *Re Harris' Settled Estates*, 28 Ch. D. 171, where *Pearson*, J., decided that, where a woman married before the commencement of the Married Women's Property Act, 1882, is a petitioner or respondent to a petition under the Settled Estates Act, 1877, relating to property settled to her separate use, her interest in which was acquired before the commencement of the Act of 1882, she must be examined separately as provided by s. 50 of the Act of 1877. His Lordship expressed his opinion in general terms that s. 1 of the Act of 1882 applies in the case of a woman married before the commencement of the Act only to property which she may acquire after the commencement of the Act. If the case falls within s. 2 or s. 5 of the Act of 1882, separate examination of a married woman with a view to an application to the Court under the Settled Estates Act, 1877, s. 50, is not necessary: *Riddell* v. *Errington*, 26 Ch. D. 220; see *Re Stanley's Settled Estate*, W. N. 1889, p. 164, 61 L. T. 169, 38 W. R. 32.

On the analogy of these decisions, it would seem that, in the case of realty to which a married woman was entitled for her separate use before 1883, the legal estate must be regarded as outstanding, and accordingly it will be prudent to require her acknowledgment. As regards personalty, it seems that a married woman may dispose of a reversionary interest settled to her separate use, independently of either Malins' Act or the Act of 1882: see *Keene* v. *Johnstone*, 1 Jo. & Ca. Ir. R. 255; *Sturgis* v. *Corp*, 13 Ves. 190.

As to personalty.

P. 232, line 37.—In *Re Cunningham and Frayling*, [1891] 2 Ch. 567, *Stirling*, J., preferred the view of *Hall*, V.-C., in *Christie* v. *Ovington*, to that of *Jessel*, M.R., in *Morgan* v. *Swansea Urban Sanitary Authority*, as to the meaning of the expression "bare trustee." Meaning of "bare trustee."

P. 233, line 15.—The effect of the Married Women's Property Act, 1882, on the decision in *Pike* v. *Fitzgibbon*, on the point here referred to, has been the subject of numerous judicial decisions. The following points have been decided as to the effect of s. 1 of the Married Women's Property Act, 1882 :— Contracts by married women.

(i.) In order to render a married woman capable of binding herself by a contract in respect of her separate property, it must be shown (as before the Act, see *Johnson* v. *Gallagher*, *Pike* v. *Fitzgibbon*) that she had some separate property at the time when the contract was made. *Re Shakespear*, *Deakin* v. *Lakin*, 30 Ch. D. 169; *Palliser* v. *Gurney*, 19 Q. B. D. 519, C. A.; *Bonner* v. *Lyon*, 38 W. R. 541; *Stogdon* v. *Lee*, [1891] 1 Q. B. 661.

(ii.) If a married woman has separate property at the date of the contract, she will be bound by the contract to the extent not only of such property but also of all separate property which she may subsequently acquire: *Bursill* v. *Tanner*, 13 Q. B. D. 691; *Becket* v. *Tasker*, 19 Q. B. D. 7; *Stogdon* v. *Lee*, *supra*, thus extending the rule in *Pike* v. *Fitzgibbon*.

(iii.) The capacity of a married woman to contract is limited to such separate property as is freely at her disposal, and not fettered by a restraint on anticipation; and unless she has such property at the date of the contract, she will not be bound. *Re Dixon*, *Dixon* v. *Smith*, 35 Ch. D. 4, 6, C. A.; *Leak* v. *Driffield*, 24 Q. B. D. 98; *Braunstein* v. *Lewis*, 65 L. T. 449, C. A.

(iv.) If a married woman has separate property, part of which is, and part is not, subject to a restraint on anticipation, she will be bound as to the latter; but the removal of the restraint as regards the former by the death of the husband will not render such property "after-acquired property" so as to be bound in respect of a contract entered into by her during coverture: *Becket* v. *Tasker*, *supra*; *Pelton* v. *Harrison*, [1891] 2 Q. B. 422, C. A.

(v.) The Act is not retrospective, but applies only to contracts made after its commencement: *Turnbull* v. *Forman*, 15 Q. B. D. 234, C. A., overruling on that point *Bursill* v. *Tanner, supra*, and following *Conolan* v. *Leyland*, 27 Ch. D. 632. The rule in *Pike* v. *Fitzgibbon*, therefore, still applies to contracts entered into before the commencement of the Act: *Re Roper, Roper* v. *Doncaster*, 39 Ch. D. 482.

(vi.) The rule in *Pike* v. *Fitzgibbon* is applicable only to liabilities arising out of contract; not so the provisions of s. 1 of the Act of 1882: *Re Roper, Roper* v. *Doncaster, supra*. See as to liability to costs, *Re Glanvill, Ellis* v. *Johnson*, 31 Ch. D. 532, C. A.; *Cox* v. *Bennett* (No. 2), [1891] 1 Ch. 617, C. A.

Acknowledgments generally.

P. 236, note (*s*).—See the observations of *Kay*, J., as to the object and effect of acknowledgment and separate examination of a married woman under the Fines and Recoveries Act, *Tennent* v. *Welch*, 37 Ch. D. 622.

Effect of order dispensing with husband's concurrence.

P. 242, note (*e*).—An order under s. 91 of the Fines and Recoveries Act does not deprive the husband of his common law right to the rents and profits during the coverture: *Fowke* v. *Draycott*, 29 Ch. D. 996.

Malins' Act.

P. 249, note (*m*).—It has been held by *Chitty*, J., that the words "any personal estate whatsoever" are wide enough to include a legal chose in action, such as a policy of life assurance effected in a married woman's own name: *Witherby* v. *Rackham*, W. N. 1891, p. 57: 39 W. R. 363.

So where a husband assigned two policies on his own life to trustees upon trust for his wife, and then purported to revoke the settlement, the revocation was inoperative because not acknowledged by the wife under this Act: *Re Turner, Turner* v. *Fitzroy*, 66 L. T. 758.

Retainer of husband's debt as against legacy to wife.

P. 249, note (*o*).—In cases where the husband is debtor to a testator, and the wife is a legatee under his will, the wife's equity to a settlement prevails over the executor's right of retainer: *Re Briant, Poulter* v. *Shackel*, 39 Ch. D. 471.

Production of Deeds.

Loss of deeds by mortgagee.

P. 256, line 33.—Where a mortgage deed and policies were missing, it was held that a second mortgagee in an action for redemption was entitled to an indemnity from the first mortgagee: *Caldwell* v. *Matthews*, W. N. 1890, p. 84, 62 L. T. 799.

AGREEMENTS.

PRELIMINARY DISSERTATION.

Statute of Frauds.

Parol agreement for marriage settlement.

P. 273, note (*d*).—After *Caton* v. *Caton,* add *Ex parte Routh, Re Whitehead,* 14 Q. B. D. 419, C. A.; *Johnstone* v. *Mappin,* 64 L. T. 48. But a parol agreement to make a settlement in consideration of marriage may be rendered valid by a subsequent acknowledgment in writing: *Barkworth* v. *Young,* 4 Drew, 21. See, as to letters, *Coverdale* v. *Eastwood,* L. R. 15 Eq. 121.

Repeal.

P. 275, line 23.—Sect. 2 of the stat. 9 Geo. IV. c. 14, is repealed by the Statute Law Revision Act, 1890.

9 Geo. IV. c. 14, s. 6.

P. 276, note (*n*).—After *Lyde* v. *Barnard,* add *Bishop* v. *Balkis Consolidated Co.,* 25 Q. B. D. 512, C. A.

Interest in land.

P. 277, note (*p*).—In *Gray* v. *Smith,* 43 Ch. D. 208, *Kekewich,* J., held that an agreement by a retiring partner to assign his share in the partnership assets which comprised land, was within the Statute of Frauds; the Court of Appeal incidentally approved of this decision, but the point was not re-argued, and the appeal was dismissed on other grounds.

License when revocable.

P. 280, line 25.—After *Cocker* v. *Cowper,* add *Plimmer* v. *Mayor, &c., of Wellington,* 9 App. Cas. 699.

Parol agreement for grant of easement.

P. 282, line 11.—For "tit. Leases" read "tit. Licenses," and see Vol. III., p. 617 *et seq.*

The decisions on the subject treated of in Vol. I., pp. 278 to 282, have recently been reviewed in the case of *McManus* v. *Cooke,* 35 Ch. D. 681, by *Kay,* J., who decided that a verbal agreement for the grant of an easement, whether or not within s. 4 of the Statute of Frauds, may be enforced if there has been part performance, although an easement cannot be granted except by deed. His Lordship pointed out that the law established by the decisions is in a very illogical and unsatisfactory state, but his decision appears to be in accordance with *Wood* v. *Lake,* which case, though apparently inconsistent on principle with most of the later cases, has never

been expressly overruled, and must therefore be regarded as being to some extent in force at the present day. See further as to *McManus* v. *Cooke*, *post*, p. 31.

Sale of building materials.

P. 288, line 27.—In *Lavery* v. *Pursell*, 39 Ch. D. 508, *Chitty*, J., held that the contract for the sale of the building materials of a standing house, to be removed by the purchaser from the land within two months from the date of the contract, was a contract for the sale of an interest in land within s. 4 of the Statute of Frauds. After attempting to distinguish the case before him from that of *Marshall* v. *Green*, he declined to carry the decision in that case any further. It is submitted that the principle of the two cases is undistinguishable. It is to be observed that in *Smith* v. *Surman*, the timber agreed to be sold was to be cut down by the vendor, which distinguishes that case, as regards the point which alone required decision and was decided, from *Marshall* v. *Green* and *Lavery* v. *Pursell*, in which cases respectively the trees were to be felled and the materials were to be pulled down by the purchaser.

Parol contract for lease.

P. 291, line 33.—After *Wright* v. *Stavert*, add *Baird* v. *Wells*, 44 Ch. D. 661, 677.

Shares and debentures.

P. 293, line 22.—See generally as to how far shares or debentures of companies will confer on their holders interests in land, *Attree* v. *Hawe*, 9 Ch. D. 337; *Jervis* v. *Lawrence*, 22 Ch. D. 202; *Re Christmas*, *Martin* v. *Lacon*, 33 Ch. D. 332; *Re David*, *Buckley* v. *Royal National Lifeboat Institution*, 43 Ch. D. 27, C. A.; *Re Parker*, *Wignall* v. *Parke*, [1891] 1 Ch. 682; *Re Bodman*, *Bodman* v. *Bodman*, [1891] 3 Ch. 135; *Driver* v. *Broad*, [1893] 1 Q. B. 744, C. A.; *Re Hollon*, *Forbes* v. *Hardcastle*, 68 L. T. 160.

Collateral agreement.

P. 294, line 13.—In *Angell* v. *Duke*, L. R. 10 Q. B. 174, it was held that an agreement entered into during the negotiation for a lease, that the intending lessor should put the premises in repair, &c., was a collateral agreement, and not part of the contract for the lease, so as to confer an interest in land within the Statute of Frauds. See also *Pulbrook* v. *Lawes*, 1 Q. B. D. 284.

Specific performance with variation.

P. 296, line 11.—After *Legal* v. *Miller*, add *Smith* v. *Wheatcroft*, 9 Ch. D. 223.

Part performance.

P. 297, line 22.—After *Charlwood* v. *Duke of Bedford*, add *McManus* v. *Cooke*, 35 Ch. D. 681.

Parol agreement to give security on land.

P. 301, line 16.—An agreement to give security on land is within the Statute of Frauds, and must be in writing, unless taken out of the statute by part performance, *e.g.*, by deposit of title deeds by the debtor; but mere possession of the deeds acquired *aliunde* by the creditor will not amount to a valid equitable mortgage: *Ex parte Broderick, Re Betham*, 18 Q. B. D. 766, C. A.; see *sub tit.* MORTGAGES, Vol. III., p. 695 *et seq.* and *post*, p. 166.

Parol settlement on marriage.

P. 301, line 29.—After *Ungley* v. *Ungley*, add *Sharman* v. *Sharman*, 67 L. T. 834, C. A. Marriage is not of itself sufficient part performance to render enforceable a parol promise to make an allowance to a child: *Johnstone* v. *Mappin*, 64 L. T. 48.

Contracts for indemnity.

P. 303, line 17.—See generally as to how far the Statute of Frauds applies to collateral contracts for indemnity, *Wildes* v. *Dudlow*, L. R. 19 Eq. 198; *Hammond* v. *Meadows*, W. N. 1889, p. 108; *Re Bolton's Estate, Morant* v. *Bolton*, W. N. 1892, p. 163, C. A.; *Re Hoyle, Hoyle* v. *Hoyle*, [1893] 1 Ch. 84, C. A.

Agreement not to be performed within the year.

P. 303, line 25.—In *McManus* v. *Cooke*, 35 Ch. D. 681, *Kay*, J., expressed his opinion that the decision which has been attributed to Lord Keeper *North* in *Hollis* v. *Edwards* is still law, and that accordingly an agreement which does not confer an interest in land may, nevertheless, be an agreement respecting land so as to take it out of the clause relating to agreements not to be performed within the year, and thus to take the agreement altogether out of sect. 4. His Lordship, however, said that, assuming this to be the law, the result is strange and not very satisfactory, and he intimated that, but for the decision in *Hollis* v. *Edwards*, his own opinion would have been that the agreement in the case before him (which was an agreement for an easement) must come within one clause or the other of the section. But the point above referred to does not appear to have been decided by the Lord Keeper, but merely to have been urged in argument on behalf of the plaintiff in *Hollis* v. *Edwards*. Lord Keeper *North* seems to have decided that the agreement before him (which was for a lease, on the faith of which the plaintiff had expended money in improvements), was prevented by the Statute from conferring on the plaintiff any interest in the land, but to have intimated his opinion that *possibly* the agreement might nevertheless subsist and that the plaintiff

might accordingly declare at law upon the agreement. From a note to the report it appears that the plaintiff did proceed at law and was nonsuited. Assuming, however, that the decision in *Hollis* v. *Edwards* is of the import attributed to it by *Kay*, J., it is with all deference submitted that such decision is inconsistent with the express terms of sect. 4 of the Statute of Frauds, and the learned Common Law Judges who ultimately decided the case presumably took the same view.

Part performance.

P. 305, line 25.—*North*, J., while following *Donellan* v. *Read*, criticised the doctrine that made performance by one party only within the year sufficient: *Miles* v. *New Zealand Alford Estate Co.*, 32 Ch. D. 266 at 276.

Parol agreement for allowance on separation.

P. 305, line 34.—The decision of *Hawkins*, J., in *Davey* v. *Shannon*, was disapproved of by the Court of Appeal in *McGregor* v. *McGregor*, 21 Q. B. D. 424, where it was held that an oral agreement by a husband to allow his wife a weekly sum for maintenance during separation was not an agreement not to be performed within one year within sect. 4 of the Statute of Frauds, and was therefore valid and binding on the husband.

Contracts for Sale of Goods.

Sale of building materials.

P. 307, line 6.—A contract for the sale of building materials to be taken down and removed by the vendor has been held to be within sect. 4 of the Statute of Frauds, see *Lavery* v. *Pursell*, *ante*, p. 30.

Delivery of goods.

P. 307, line 33.—As to the effect of a vendee obtaining possession of "documents of title to goods" within the meaning of the Factors Acts, where there is no memorandum of contract for sale of the goods within sect. 17 of the Statute of Frauds, see *Hugill* v. *Masker*, 22 Q. B. D. 364, C. A.; and see sect. 9 of the Factors Act, 1889 (52 & 53 Vict. c. 45), which repeals the earlier Factors Acts, and consolidates the law relating to factors.

Acceptance of goods.

P. 308, line 7.—Examination by a vendee of goods received by him in order to compare them with a sample is a sufficient acceptance of the goods to preclude the vendee from setting up s. 17 of the Statute of Frauds to an action on the contract: *Page* v. *Morgan*, 15 Q. B. D. 228, C. A.

Nature of memorandum within sect. 17.

P. 308, *ad fin.*—The view of the law as to contracts under s. 17 of the Statute of Frauds suggested in the last paragraph of this page cannot now be supported. In *Maddison* v. *Alderson*, 8 App. Cas. 467, at p. 488, Lord Blackburn thus stated the law on the subject: "I think it is now finally settled that the true construction of the Statute of Frauds, both of the 4th and 17th sections, is not to render the contracts under them void, still less illegal, but is to render the kind of evidence required indispensable, when it is sought to enforce the contract."

A memorandum of a contract for sale of goods under s. 17 of the Statute must be in existence before action upon the contract can be brought: *Lucas* v. *Dixon*, 22 Q. B. D. 357, C. A. As to what is a sufficient memorandum within this section, see *Taylor* v. *Smith*, [1893] 2 Q. B. 65, C. A.

What Signature is Sufficient.

Seal of corporation.

P. 309, line 8.—After *Crampton* v. *Varna Rail. Co.*, add *Guardians of Dartford Union* v. *Trickett*, 59 L. T. 754, affd. 5 T. L. R. 619, C. A.

Contracts by local authorities.

P. 310, line 22.—After *Young* v. *Mayor, &c., of Leamington*, add *Tunbridge Wells Improvement Commissioners* v. *Southborough Local Board*, W. N. 1887, p. 237, 60 L. T. 72.

Signature by one party.

P. 311, line 1.—After *Beer* v. *London & Paris Hotel Co.*, add *Smith* v. *Brentnell*, W. N. 1888, p. 69.

Description of vendor.

P. 311, line 32.—*Rossiter* v. *Miller* was affirmed, 3 App. Cas. 1124. See *Butcher* v. *Nash*, W. N. 1889, p. 116, 61 L. T. 72.

P. 311, line 36.—After *Potter* v. *Duffield*, add *Jarrett* v. *Hunter*, 34 Ch. D. 182, where *Kay*, J., said, that it is immaterial in such a case that the purchaser knows who the vendor actually was. See also *Coombs* v. *Wilkes*, [1891] 3 Ch. 77.

Name omitted from body of agreement.

P. 311, *ad fin.*—Where by a memorandum of agreement the plaintiff agreed to let land for a term of years, "the tenant" paying a certain rent, but the plaintiff's name alone appeared in the memorandum, which was signed by both plaintiff and defendant, it was held that the agreement was valid under the Statute of Frauds: *Stokell* v. *Niven*, W. N. 1889, p. 100, 61 L. T. 18, C. A.

Signature by agent.

P. 315, line 4.—After *Schneider* v. *Norris*, add *Evans* v. *Hoare*, [1892] 1 Q. B. 593, in which it was held that a letter written by an agent by direction of his principal, and containing in the body of the letter the name of the principal, was, when signed by the other party, a binding contract within the Statute of Frauds.

Contract by telegram.

P. 315, line 17.—After *McBlaine* v. *Cross*, add *Williams* v. *Brisco*, 22 Ch. D. 441.

Agreement by several connected writings.

P. 316, line 33.—A common reference in several documents to the same parol agreement is sufficient evidence of the connection of such documents, so as to constitute a note or memorandum of contract within the Statute of Frauds: *Studds* v. *Watson*, 28 Ch. D. 305. *Kekewich*, J., in *Oliver* v. *Hunting*, 44 Ch. D. 205, considered that parol evidence is generally admissible wherever required to connect several documents; but this statement of the law is perhaps wider than is warranted by previous decisions. See *Coombs* v. *Wilkes*, [1891] 3 Ch. 77.

Parol evidence to rebut agreement.

P. 317, line 7.—After *Malins* v. *Freeman*, add *Hussey* v. *Horne Payne*, 4 App. Cas. 311.

Agreement constituted by letters.

P. 317, line 19.—After *Crossley* v. *Maycock*, add *Bolton Partners* v. *Lambert*, 41 Ch. D. 295, C. A. See also *Rossiter* v. *Miller*, 3 App. Cas. 1124; *Gray* v. *Smith*, 43 Ch. D. 208. If an agreement is expressly subject to a formal contract being prepared there is no binding agreement until such formal contract is prepared and accepted: *Winn* v. *Bull*, 7 Ch. D. 29; *Hawkesworth* v. *Chaffey*, W. N. 1886, p. 2, 54 L. T. 72.

P. 317, *ad fin.*—After *Munday* v. *Asprey*, add *Preston* v. *Luck*, 27 Ch. D. 497, C. A.

P. 318, line 6.—After *Gibson* v. *Holland*, add *Wylson* v. *Dunn*, 34 Ch. D. 569.

P. 318, line 27.—If on the whole correspondence a complete contract has been arrived at, it will not be got rid of by subsequent negotiations: *Bellamy* v. *Debenham*, [1891] 1 Ch. 412, C. A. But such negotiations may be evidence that a contract apparently complete was really not so: *Hussey* v. *Horne Payne*, 4 App. Cas. 311; *Bristol, &c., Aërated Bread Co.* v. *Maggs*, 44 Ch. D. 616.

P. 320, line 6.—After *Mortlock* v. *Buller*, add *Chadburn* v. *Moore*, W. N. 1892, p. 126, 67 L. T. 257, 41 W. R. 39, where *Kekewich*, J., held that instructions to an estate agent to find a purchaser and negotiate a sale of land did not amount to an authority to bind the vendor to an open contract. Authority of agent.

P. 324, line 28.—After *Mews* v. *Carr*, add *Re Roberts*, *Evans* v. *Roberts*, 36 Ch. D. 196. Entry in auctioneer's book.

Statement of Consideration for Agreement.

P. 328, line 11.—The cases cited on this and the preceding pages with regard to guarantee are at the present day of value only so far as they illustrate the general rule applicable to other classes of contracts falling within s. 4 of the Statute of Frauds, viz., that the consideration must appear in writing in, or by necessary implication from, the written document: See the Mercantile Law Amendment Act (19 & 20 Vict. c. 97) s. 3. A consideration of the provisions of this Act is foreign to the scope of the present Treatise. The general rule laid down in *Wain* v. *Warlters* would seem to be still in force as regards all contracts which do not come within the statutory exception. Statement of consideration.

P. 328, line 17.—Mere forbearance is not a sufficient consideration for an undertaking to guarantee the debt of another; but a binding agreement for such forbearance is sufficient; so also actual forbearance at the request of the guarantor: *Crears* v. *Hunter*, 19 Q. B. D. 341, C. A. Forbearance how far a sufficient consideration.

P. 328, line 25.—In *Miles* v. *New Zealand Alford Estate Co.*, 32 Ch. D. 266, the Court of Appeal (*Cotton*, *Bowen*, and *Fry*, L.JJ.), held that the law laid down in *Callisher* v. *Bischoffsheim* was correct, and dissented from the criticisms on that decision of *Brett*, L.J., in *Ex parte Banner*.

Declarations of Trusts.

P. 332, line 4.—After *Moore* v. *Moore*, add *Re Shield*, *Pethybridge* v. *Burrow*, W. N. 1885, p. 83, 53 L. T. 5, C. A. Parol declaration of trust of personalty.

P. 333, line 33.—After *O'Hara* v. *O'Neill*, add *James* v. *Smith*, [1891] 1 Ch. 384, affirmed on the facts, W. N. 1891, p. 175, 65 L. T. 544, C. A. Purchase on behalf of another.

Constructive trust.

P. 338, line 21.—The doctrine as to constructive trusts has been extended to include the case of the purchase of a reversion by a tenant for life: *Phillips* v. *Phillips*, 29 Ch. D. 673, C. A.

Resulting trust.

P. 339, line 26.—After *Cook* v. *Hutchinson*, add *Re Croome*, *Croome* v. *Croome*, W. N. 1888, pp. 37, 152, 59 L. T. 582, C. A.

Advancement.

P. 341, line 9.—After *Bennet* v. *Bennet*, add *Re Orme*, *Evans* v. *Maxwell*, 50 L. T. 51. See *Standing* v. *Bowring*, 31 Ch. D. 282, C. A.

P. 344, line 29.—Where a son agreed to buy a business for 1500*l.*, and the father paid a portion of the purchase-money in his lifetime, and had given a joint promissory note with his son for the balance, which balance was paid by the father's executors under pressure, it was held that the sums paid by the father in his lifetime were advances to the son, but that the balance was paid in respect of the father's liability as surety: *Re Whitehouse*, *Whitehouse* v. *Edwards*, 37 Ch. D. 683, where the previous decisions are reviewed.

Parol Evidence to Explain Writings.

Parol explanation of writings.

P. 345, line 10.—After *Adams* v. *Wordley*, add *Stott* v. *Fairlamb*, 48 L. T. 574 (reversed by C. A. on another point, W. N. 1883, p. 200).

Damages exceeding penalty in bond.

P. 351, line 7.—After *Clarke* v. *Seaton*, add *Mathews* v. *Keble*, L. R. 3 Ch. A. 691.

Marriage articles.

P. 353, note (*c*).—Add reference to *Johnstone* v. *Mappin*, 64 L. T. 48.

Collateral parol agreement.

P. 356, line 28.—A defendant may show that there was a collateral agreement by parol which formed part of the consideration for the written agreement, and induced him to enter into it, provided the alleged parol agreement is not itself of such a character as to be required to be reduced to writing, and is not inconsistent with the written agreement: *Erskine* v. *Adeane*, L. R. 8 Ch. A. 756. See also *Miles* v. *New Zealand Alford Estate Co.*, 32 Ch. D. 266, 279, C. A.

Performance with variation.

P. 357, line 34.—In *Preston* v. *Luck*, 27 Ch. D. 497, it was held by the Court of Appeal that, where a written agreement has been executed, though in some cases it is a good defence

to an action for specific performance that the *defendant* did not understand the agreement according to what the Court holds to be its true construction: the fact that the *plaintiff* has put an erroneous construction upon it, and has insisted up to the hearing that the agreement included what, upon the defendant's contention, it did not include, does not prevent there being a contract, nor preclude the plaintiff from waiving the question of construction at the hearing, and obtaining specific performance according to what the defendant admits to be the true construction.

Reforming a settlement.

P. 359, line 23.—After *Welman* v. *Welman*, add *Tucker* v. *Bennett*, 38 Ch. D. 1, C. A., in which *Cotton*, L. J., disapproved of the decision of *Bacon*, V.-C., in *Smith* v. *Iliffe*.

Evidence to assist construction.

P. 361, line 16.—After *King of Spain* v. *Machado*, add *Goodwin* v. *Robarts*, 1 App. Cas. 476, 496.

Foreign contracts.

P. 362, note (*g*).—After *Robinson* v. *Bland*, add:—The Court will endeavour to ascertain from the contract itself by what law the parties intended that the contract should be governed: *Re Missouri Steam Ship Co.*, 42 Ch. D. 321, C. A.; see also *Re Barnard, Barnard* v. *White*, W. N. 1887, p. 8, 56 L. T. 9.

Technical words.

P. 363, line 3.—After *Uhde* v. *Walters*, add *Birrell* v. *Dryer*, 9 App. Cas. 345.

P. 363, line 19.—After *Noel* v. *Lord Rochfort*, add *Hart* v. *Standard Marine Insu. Co.*, 22 Q. B. D. 499, C. A.

Evidence of custom.

P. 366, line 19.—After *Hayton* v. *Irwin*, add *Tancred* v. *Steel Co. of Scotland*, 15 App. Cas. 125, 136, Sc.

Latent ambiguity.

P. 368, line 4.—After *Shardlow* v. *Cotterell*, add *Oliver* v. *Hunting*, 44 Ch. D. 205.

Parol agreement to postpone performance.

P. 381, line 17.—As to the effect of parol postponement of performance of a written agreement, the following additional cases may be consulted:—*Stewart* v. *Eddowes*, L. R. 9 C. P. 311; *Hickman* v. *Haynes*, L. R. 10 C. P. 598; *Sanderson* v. *Graves*, L. R. 10 Ex. 234; *Tyers* v. *Rosedale, &c., Iron Co.*, L. R. 10 Ex. 195.

Sect. 2.—*Stamps on Agreements.*

Pp. 381 to 401.—See, on this subject, *post, sub tit.* STAMPS.

PRECEDENTS AND NOTES THERETO.

Precedent I.—Sale of Freeholds.

Erratum. **P. 404, line 12.**—The words in Clause 4, "the vendor shall return the deposit, but," were inserted by inadvertence and should be omitted from this Precedent, which contains no provision for payment of a deposit. A deposit should as a general rule be required and stipulated for in the contract, but occasionally it is dispensed with. Precedent II. (p. 408) contemplates the payment of a deposit, and expressly provides accordingly.

Rescission of contract. **P. 404, note** (*d*).—The reference here made to the consideration of the clause entitling the vendor to rescind, is to Vol. II. pp. 659 *et seq.* See also *post, sub tit.* Conditions of Sale, where the later cases on the subject are stated and discussed.

Compensation after completion of purchase. **P. 404, note** (*e*).—On the point discussed in this note reference may be made to the more recent cases of *Clayton* v. *Leech*, 41 Ch. D. 103, C. A.; *Nash* v. *Wooderson*, 52 L. T. 49, 33 W. R. 301, W. N. 1884, p. 210. See also *Addenda* to Vol. I.

Errata. **P. 406, line 11.**—For "rents" read "rates."

P. 407, line 1.—For "purchaser" read "vendor."

Completion of contract. **Pp. 406, 407, note** (*h*).—The reference to *tit.* Conditions of Sale is to Vol. II. pp. 661 *et seq.*, and pp. 650 *et seq.* respectively.

Precedent II.—Sale of Copyholds.

Compensation for errors in description. **P. 410, note** (*c*).—Add references to *Re Terry and White's Contract*, 32 Ch. D. 14, C. A.; *Re Fawcett and Holmes Contract*, 42 Ch. D. 150, C. A. The reference to *tit.* Conditions of Sale is to Vol. II. pp. 603 *et seq.*, 691 *et seq.*

Precedent III.—Sale of Land by Tenant for Life.

Trusts for sale. **P. 412, note** (*a*).—In connexion with the remarks on the effect of s. 63 of the Settled Land Act, 1882, contained in this note, reference should be made to the Settled Land Act, 1884 (47 & 48 Vict. c. 18), ss. 6, 7, which will be found set out and considered in Vol. VI., at pp. 231 *et seq.*, *sub tit.* Settlements.

Repeal.

The stat. 13 & 14 Vict. c. 21, is repealed by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which, however, by s. 3 re-enacts the definition of "land" given by s. 4 of the repealed Act.

Power of tenant for life to sell.

P. 414, note (*a*).—By s. 9 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69), a tenant for life is empowered to sell settled land for building purposes in fee simple in consideration of a reservation thereout of a perpetual rent or rent-charge.

By s. 10 (1) of the same Act, s. 15 of the Act of 1882, is repealed, but is re-enacted with some important variations. The section will be found set out and considered, *sub tit.* SETTLEMENTS, *post.* The reference to *tit.* PURCHASES is to Vol. V. pp. 40 *et seq.*, to *tit.* MORTGAGES is to Vol. III. p. 1039.

Marginal notes to Acts of Parliament.

P. 415, note (*a*).—In *Sutton* v. *Sutton*, 22 Ch. D. at p. 513, *Jessel*, M.R. retracted his dictum in *Re Venour* as to marginal notes forming part of Acts.

Contracts by tenant for life.

P. 416, note (*a*).—As to the creation of easements on an exchange or partition by a tenant for life, see the Settled Land Act, 1890, s. 5. And as to completion of predecessors' contract by tenant for life, see s. 6 of the same Act; and as to both sections, see, *post, sub tit.* SETTLEMENTS.

Notices to trustees.

P. 417, note (*a*).— The remarks on this and the two following pages as to notice to trustees must now be read in connexion with the provisions contained in s. 5 of the Settled Land Act, 1884, set out and considered in Vol. VI. pp. 482 *et seq.*

Payment of purchase money to solicitor.

P. 422, note (*d*).—*Re Bellamy, and Met. Board of Works*, is now also reported, 24 Ch. D. 387. See also *Re Flower and Met. Board of Works*, 27 Ch. D. 592; *Day* v. *Woolwich Equitable Building Society*, 40 Ch. D. 491. Now by the Trustee Act, 1888, s. 2 (1) trustees may authorise a solicitor to receive payments and give receipts. See the section set out and considered in Vol. VI. pp. 337 *et seq.*

PRECEDENT V.—SALE OF LEASEHOLDS.

Fire insurance.

P. 430, note (*d*).—Add reference to *Castellain* v. *Preston*, 11 Q. B. D. 380. And see further as to keeping up policies, &c., Vol. II. pp. 815, 816, *sub tit.* CONDITIONS OF SALE.

Precedent VI.—Sale of Leasehold Farm.

Waiver of objections to title.

P. 431, note (*e*).—After *Fludyer* v. *Cocker*, add *Ballard* v. *Shutt*, 15 Ch. D. 122.

Precedent VII.—Sale of Shop and Goodwill.

Right of vendor of goodwill to carry on business.

P. 433, note (*f*).—As to the right of the vendor of a good will to carry on business and solicit continuance of custom from persons who have dealt with him before the sale, see *Pearson* v. *Pearson*, 27 Ch. D. 145, C. A.; *Vernon* v. *Hallam*, 34 Ch. D. 748; *Re Irish*, *Irish* v. *Irish*, 40 Ch. D. 49. As to agreements in restraint of trade generally, see, *sub tit.* Bonds, Vol. II. pp. 328 *et seq.*

User of vendor's trade name.

If such is the intention, the following words may be added in clause 1 (p. 433, l. 2), after the word "business"—

"And also together with the right to carry on such business under the style or firm of [*name of firm*]."

In such a case, clause 8 should provide that the assignment shall contain a covenant—

"And not to use or authorise his name or the style or name of [*name*] to be used by any person or persons for the purpose of such trade or business within the limits aforesaid for the space of," &c.

Bill of sale.

P. 434, note (*a*).—If the payment of the instalments of purchase money is made a charge on the property sold, the agreement will (as regards the chattels) come within the mischief of the Bills of Sale Acts: see *Coburn* v. *Collins*, 35 Ch. D. 373.

Precedent IX.—Sale of Land to a Railway Company.

Surveyor's declaration.

P. 441, note (*a*).—A declaration by the surveyors under s. 9 of the Lands Clauses Act, is an essential part of the procedure: *Bridgend Gas and Water Co.* v. *Dunraven*, 31 Ch. D. 219.

Provision as to price where vendor is a limited owner.

If the vendor is a limited owner, the provisions of s. 9 of the Lands Clauses Act, 1845, must be strictly complied with, and the following clause as to the price should be inserted after clause 3 (Vol. I. p. 443):—

"If the amount of the purchase money and compensation which shall be determined pursuant to the provisions of the

Lands Clauses Consolidation Act, 1845, shall exceed the sum of £——, then this agreement shall be read as if the sum so determined had originally been the price agreed upon, and had been substituted herein for the said sum of £——."

Purchase by railway company.

P. 442, note (*a*).—As to agreement for purchase by a railway company of certain lands "or of such portion as the company may require," see *Wentworth* v. *Hull & North Western Junction Rail. Co.*, 64 L. T. 190.

Minerals.

P. 443, note (*c*).—Common clay is not a "mineral" within the meaning of s. 77 of the Railways Clauses Act, 1845: *Lord Provost, &c., of Glasgow* v. *Farie*, 13 App. Cas. 657, Sc.

See generally as to mines and minerals with reference to conveyances of land to railway and other like companies: *Midland Rail. Co.* v. *Haunchwood, &c., Co.*, 20 Ch. D. 552; *Midland Rail. Co.* v. *Miles*, 33 Ch. D. 632, C. A.; *Consett Waterworks Co.* v. *Ritson*, 22 Q. B. D. 702, C. A.; *Midland Rail. Co.* v. *Robinson*, 15 App. Cas. 19.

Solicitors' costs.

P. 445, note (*e*).—As to solicitors' costs under the Lands Clauses Acts, see *Re Stewart*, 41 Ch. D. 494.

Precedent X.—Sale of Land to Promoters.

Accommodation works.

P. 448, note (*a*).—After *Wiseman* v. *Booker*, add *Charman* v. *South Eastern Rail. Co.*, 21 Q. B. D. 524, C. A.

Precedent XIV.—Sale of Advowson.

Advowson.

P. 462, note (*d*).—As to the meaning of "land" in Acts of Parliament, see now the Interpretation Act, 1889, s. 3, which is identical with the corresponding section of the repealed Act (13 & 14 Vict. c. 21). This definition would seem to include incorporeal hereditaments such as an advowson; see *Jones* v. *Watts*, 43 Ch. D. 574, C. A.

Precedent XV.—Sale of Next Presentation.

Roman Catholics.

P. 467, note (*a*).—Add reference to *Boyer* v. *Bishop of Norwich*, [1892] A. C. 417, P. C.

Precedent XVIII.—Sale of Reversion.

Succession duty.

P. 479, note (*k*).—Add reference to *Re Langham*, W. N. 1890, p. 213, 39 W. R. 156, C. A.

Precedent XIX.—Sale of Timber.

Timber.

P. 481, note (*o*).—See as to the rights of a tenant for life to cut timber on a "timber estate" for his own benefit, *Dashwood* v. *Magniac*, [1891] 3 Ch. 306, C. A. The reference to *tit.* Settlements is to Vol. VI. pp. 388 *et seq.* The reference to *tit.* Purchases is erroneous. The subject of succession duty is treated of *sub tit.* Stamp Duties, Vol. VII. p. 258.

Precedent XXII.—Arbitration.

Reference to arbitration.

Pp. 492 to 500.—In using this precedent, reference should be made to the provisions of the Arbitration Act, 1889, as to which, see, *post, sub. tit.* Arbitration.

Precedent XXIII.—Settlement of Boundaries.

Confusion of boundaries.

P. 505, note (*a*).—After *Duke of Leeds* v. *Earl Strafford*, add *Searle* v. *Cooke*, 43 Ch. D. 519, C. A. After *Grierson* v. *Eyre*, add *Spike* v. *Harding*, 7 Ch. D. 871.

Precedent XXIV.—Partition.

Partition by order of Court.

P. 508, note (*a*).—See further, as to effecting partitions by order of the Court, Vol. IV., pp. 138, *et seq.*, *sub tit.* Partition; and as to how the costs of a partition action are to be borne, see *Belcher* v. *Williams*, 45 Ch. D. 510.

Precedent XXVII.—Exchange.

Creation of easements by tenant for life.

P. 523, note (*m*).—As to creation of easements on exchange or partition by a tenant for life, see the Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 5, set out, *sub tit.* Exchange, *post*, p. 133.

Precedent XXVIII.—Adoption.

Guardianship of infant.

Pp. 525 to 531.—The Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27) has altered the law of guardianship by giving to mothers the right to be guardians of their children, and in certain cases to appoint guardians after their own deaths. The Act enacts as follows:—

On death of father, mother

Sect. 2. "On the death of the father of an infant, and in case

the father shall have died prior to the passing of this Act, then from and after the passing of this Act, the mother, if surviving, shall be the guardian of such infant, either alone, when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the court may, if it shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother. to be guardian alone or jointly with others.

Sect. 3 (1.) "The mother of any infant may by deed or will appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such infant (if such infant be then unmarried), and where guardians are appointed by both parents they shall act jointly. Mother may appoint guardian in certain cases.

(2.) "The mother of any infant may by deed or will provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the Court, after her death, if it be shown to the satisfaction of the Court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or make such other order in respect of the guardianship as the Court shall think fit.

(3.) "In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the Court for its direction, and the Court may make such order or orders regarding such matters in difference as it shall think proper.

Sect. 4. "Every guardian in England and Ireland under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be) of an infant as any guardian appointed by will or otherwise now has in England under the Act, Twelve Charles the Second, chapter twenty-four, or in Ireland under the Act of the Irish Parliament, Fourteen and Fifteen Charles the Second, chapter nineteen, or otherwise. Powers of guardian.

Sect. 5. "The Court may, upon the application of the mother of any infant (who may apply without next friend) make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think just. Court may make orders as to custody.

Sect. 6. "In England and Ireland the High Court of Justice, in any division thereof, and in Scotland either division of the Court Power to Court to

remove guardian.

of Session, may, in their discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Act, and may also, if they shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

Guardianship in case of divorce or judicial separation.

Sect. 7. "In any case where a decree for judicial separation, or a decree either *nisi* or absolute for divorce, shall be pronounced, the Court pronouncing such decree may thereby declare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and, in such case, the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children."

By s. 9 of the Act, the expression "the Court" is to mean in England and Ireland, the High Court of Justice or the County Court of the district in which the respondent or respondents or any of them may reside.

This Act has not introduced any change in the rule as to the religious education of children, as to which see *Re Scanlan*, 40 Ch. D. 200; *Re Nevin*, [1891] 2 Ch. 299, C. A.; *Re McGrath*, [1893] 1 Ch. 143, C. A., and the Custody of Children Act, 1891 (54 Vict. c. 3), s. 4.

Precedent XXXII.—Building Agreement.

Alterations, &c., in works.

P. 544, note (*a*).—As to the effect of provisions such as those contained in Precedent XXXII., Clause 5, see *Tharsis Sulphine, &c., Co.* v. *McElroy*, 3 App. Cas. 1040; *Richards* v. *May*, 10 Q. B. D. 400.

Assignment of contract.

P. 546, line 7.—As to the effect of an assignment by a contractor as between his assignee and the trustee under the subsequent bankruptcy of the contractor: see *Ex parte Nichols, Re Jones*, 22 Ch. D. 782, C. A.; *Ex parte Moss, Re Toward*, 14 Q. B. D. 310, C. A.; *Drew* v. *Josolyne*, 18 Q. B. D. 590, C. A.

Cesser on contractor's default.

The remainder of clause 9 is objectionable, on the ground of its express reference to the bankruptcy of the contractor, see *Ex parte Barter, Re Walker*, 26 Ch. D. 510, C. A. It will be better to substitute provisions similar to those contained in Precedent XXXI., Clause 5 (Vol. I., p. 540), with such modification as may be necessary, which provisions appear to be free from the objection. See *Ex parte Newitt, Re Garrud*, 16 Ch. D. 522, C. A.

PRECEDENT XXXV.—EMPLOYMENT OF FACTOR.

Factors Acts.

P. 562, note (*a*).—The stats. 5 & 6 Vict. c. 39, and 40 & 41 Vict. c. 39, are repealed by the Factors Act, 1889 (52 & 53 Vict. c. 45).

Receipt of profits not a partnership.

P. 562, note (*b*).—See now s. 2, sub-s. 3 (*b*) of the Partnership Act, 1890 (53 & 54 Vict. c. 39), by which Act the stat. 28 & 29 Vict. c. 86 is wholly repealed, but substantially re-enacted. See, *post, sub tit.* PARTNERSHIP.

PRECEDENT XXXIX.—AGREEMENT FOR LOAN.

Agreement for loan.

P. 573, note (*a*).—Specific performance of an agreement for a loan will not be enforced, but parties will be left to their remedy for damages, the measure of which is the loss sustained by the breach, and may be merely nominal: *Western Wagon and Property Company* v. *West*, [1892] 1 Ch. 271, and see *Manchester and Oldham Bank* v. *Cook*, 49 L. T. 674, where substantial damages were given. As to stamps on agreements for loans, see, *post, sub tit.* STAMP DUTIES.

PRECEDENT XLII.—AGREEMENT AS TO LIGHTS.

Agreement for easement.

P. 578, note (*a*).—The validity of the agreement in *Bewley* v. *Atkinson*, which was signed by the dominant owner only, was incidentally recognised in *Mitchell* v. *Cantrill*, 37 Ch. D. 56, 60, C. A. See further as to the effect of rebuilding as regards ancient lights: *Newson* v. *Pender*, 27 Ch. D. 43, C. A.; *Bullers* v. *Dickinson*, 29 Ch. D. 155; *Greenwood* v. *Hornsey*, 33 Ch. D. 471.

PRECEDENT XLVI.—RIGHT TO SELL PATENT MEDICINE.

Employment of agent for specified term.

P. 623, note (*a*).—As to the implication of a condition that employment shall be continuous during a specified term, see *Rhodes* v. *Forwood*, 1 App. Cas. 256; *Emanuel* v. *Compagnie Fermière, &c., de Vichy*, W. N. 1889, p. 150, C. A.; *Turner* v. *Goldsmith*, [1891] 1 Q. B. 544, C. A.

PRECEDENT XLVIII.—HIRING AGREEMENT.

Omission of Clause 9 recommended.

P. 633, Clause 9.—Having regard to the great strictness of construction which the Courts have put upon the provisions of the Bills of Sale Acts, it would be advisable to omit Clause 9

of this Precedent, inasmuch as it might possibly be held that its effect is to vitiate the instrument as a hiring agreement, as being only consistent with an intention to effect an out-and-out sale, and to create a security for payment of the purchase-money, and so render the instrument a bill of sale within the mischief of the Acts; see *Re Watson, Ex parte Off. Rec.*, 25 Q. B. D. 27, C. A.; *Madell* v. *Thomas & Co.*, [1891] 1 Q. B. 230, C. A. It will be better, instead of Clauses 8 and 9, to insert in an agreement of this nature, a clause in the form given *sub tit.* SPECIAL PRECEDENTS, Precedent I., cl. 6, Vol. VI., p. 804.

Erratum. **P. 634, Clause 10.**—This Clause is a repetition, through inadvertence, of Clause 4, and should be omitted.

PRECEDENT LI.—CONSTRUCTION OF SHIP.

Distress on unfinished ship. **P. 638, note** (*d*).—An unfinished ship may be distrained upon for rent of the yard or dock due from the builders: *Clarke* v. *Millwall Dock Co.*, 17 Q. B. D. 494, C. A.

Cesser on contractor's default. **P. 640, line 16.**—Omit from Clause 10 of Precedent XLI. all reference to the contractor's becoming bankrupt or compounding with his creditors. The Clause will then run as follows:—

"If the contractors shall make default," &c. [*as in the text*]. See *Ex parte Barter*, 26 Ch. D. 510, C. A.

ANNUITIES.

PRELIMINARY DISSERTATION.

NATURE AND INCIDENTS OF ANNUITIES.

Personal annuity. **P. 654, line 11.**—Add reference to *Re Rivett-Carnac's Will*, 30 Ch. D. 136, where *Chitty*, J., on the analogy of the cases cited, discusses the question whether a personal annuity is "land" within the Settled Land Act, 1882 (45 & 46 Vict. c. 38).

Action for recovery of rent charge. **P. 656, line 27.**—After *Thomas* v. *Sylvester*, add *Christie* v. *Barker*, 53 L. J. Q. B. 537, C. A.; *Re Blackburn Building Society, Ex parte Graham*, 42 Ch. D. 343, C. A.; *Searle* v. *Cooke*, 43 Ch. D. 519, C. A.

P. 657, *ad fin.*—The stat. 32 Hen. VIII., c. 2, is repealed by the Statute Law Revision Act, 1887 (50 & 51 Vict. c. 59). Repeal.

P. 660, line 37.—In order to bring goods within the exemption of *Sampson* v. *Hartopp*, there must be a "delivery" of the goods: *Clarke* v. *Millwall Dock Co.*, 17 Q. B. D. 494, C. A. Exemption from distress.

P. 661, line 10.—Add reference to *Thomas* v. *Mirehouse*, 19 Q. B. D. 563.

P. 661, line 21.—The Stat. 2 Will. & M. sess. 1, c. 5, is repealed by the Statute Law Revision Act, 1887. Repeal.

P. 676, line 21.—Add references to *Scottish Widows Fund* v. *Craig*, 20 Ch. D. 208; *Northern Assurance Co.* v. *Harrison*, W. N. 1889, p. 74; *Re Tucker, Tucker* v. *Tucker*, [1893] 2 Ch. 323. Recovery of arrears by sale.

P. 684, line 29.—As to the effect of s. 10 of the stat. 22 & 23 Vict. c. 35, see *Booth* v. *Smith*, 14 Q. B. D. 318, C. A. Extinguishment of rent-charge.

P. 688, line 18.—In *Lawrence* v. *Lawrence*, 26 Ch. D. 795, where a testator died before the commencement of the Apportionment Act, 1870, and a tenant for life died after such commencement, *Pearson*, J., held that the executors were entitled to apportionment under the Act. Apportionment.

P. 688, line 24.—As to apportionment of liability between tenant for life and remainderman, see *Re Muffett, Jones* v. *Mason*, 39 Ch. D. 534; *Re Harrison, Townson* v. *Harrison*, 43 Ch. D. 55; *Re Bacon, Grissell* v. *Leathes*, 41 W. R. 478.

P. 689, line 1.—After *Booth* v. *Leicester*, add *Edwards* v. *Warden*, 1 App. Cas. 281. Interest on arrears.

P. 689, line 22.—See generally as to the circumstances under which interest can be claimed under the stat. 3 & 4 Will. IV., c. 42, *London, Chatham & Dover Rail. Co.* v. *South Eastern Rail. Co.*, [1892] 1 Ch. 120, C. A.; *Phillips* v. *Homfray*, [1892] 1 Ch. 465, C. A.; *Re Lloyd Edwards, Williams* v. *Trench*, 65 L. T. 453.

P. 690, line 8.—Add references to *Popple* v. *Sylvester*, 22 Ch. D. 98; *Ex parte Fewings, Re Sneyd*, 25 Ch. D. 338, C. A.; *Arbuthnot* v. *Bunsilall*, W. N. 1890, p. 37, 62 L. T. 234.

P. 694, line 25.—Add reference to *Prior* v. *Bagster*, W. N. 1887, p. 194, 57 L. T. 760. Receiver.

Stamps on Annuity Deeds.

P. 704, *ad fin.*—See as to stamps, *post*, *sub tit.* STAMPS. Stamps.

APPOINTMENT.

PRELIMINARY DISSERTATION.

Execution of Powers.

Reference to power.

P. 735, note (*d*).—In *Von Brockdorff* v. *Malcolm*, 30 Ch. D. 172, *Pearson*, J., refused to follow the construction put by *Fry*, J., upon the words "*beneficial* power of disposition," and held in a similar case that the power was well executed. See also *Re Denton, Bannerman* v. *Toosey*, W. N. 1890, p. 46, 63 L. T. 105. See further as to appointments under special powers by will making no reference to the power, Jarman on Wills (5th Ed. by Robbins), Vol. I., pp. 641, 642.

Attestation.

P. 741, *ad fin.*—After *Willan* v. *Lancaster*, add *Re Kirwan's Trusts*, 25 Ch. D. 373.

Bankrupt married woman.

P. 743, line 22.—A married woman trading separately from her husband is not compellable in bankruptcy to exercise for the benefit of her creditors a general power of appointment of which she is donee, the property which is the subject of the power not being the "separate property" of the married woman within the meaning of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75): *Ex parte Gilchrist, Re Armstrong*, 17 Q. B. D. 521, C. A. See also *Re Roper, Roper* v. *Doncaster*, 39 Ch. D. 482, 491.

General devise does not effect revocation.

P. 750, line 35.—Where a power to appoint by deed or will has been fully exercised by deed reserving powers of revocation and new appointment, a general devise by a subsequent will does not of itself amount by virtue of s. 27 of the Wills Acts to an exercise of the powers of revocation and new appointment: *Charles* v. *Burke*, 43 Ch. D. 223, n.; *Re Brace, Welch* v. *Colt*, [1891] 2 Ch. 671.

Exclusive appointments.

P. 756, line 21.—The rule formerly in force as to exclusive and illusory appointments, as laid down in *Kemp* v. *Kemp*, and other cases, was incidentally recognised in a Canadian Case, *McGibbon* v. *Abbot*, 10 App. Cas. 653, 662. This rule never formed part of the law of Lower Canada: *ib.*

Erratum.

P. 756, last line.—Omit the words "Lord St. Leonard's Act."

Rule of perpetuities.

P. 760, line 37.—After *Hay* v. *Lord Coventry*, add *Re Frost*, *Frost* v. *Frost*, 43 Ch. D. 246; *Whitby* v. *Mitchell*, 44 Ch. D. 85, C. A. And see the question as to gifts to the issue of unborn persons discussed, Jarman on Wills (5th Ed. by Robbins), Vol. I. pp. 243 *et seq.*

Restraint on anticipation.

P. 761, line 8.—Add references to *Re Ridley*, *Buckton* v. *Hay*, 11 Ch. D. 645, 650; *Cooper* v. *Laroche*, 17 Ch. D. 368; *Re D'Estampes' Settlement*, 53 L. J. Ch. 1120; *Re Errington*, *Bawtree* v. *Errington*, W. N. 1887, p. 23; *Whitby* v. *Mitchell*, 42 Ch. D. 494, 504 (affirmed by C. A. 44 Ch. D. 85); *Shute* v. *Hogg*, 58 L. T. 546.

Appointment in excess of power.

P. 761, line 35.—In *Re Kerr's Trusts*, 4 Ch. D. 600, where a mother, under a power to appoint among her "children," appointed the fund equally between two children one of whom only was legitimate, it was held that the appointment was valid as regarded the share appointed to the legitimate child.

P. 762, line 39.—The general rule laid down in the decisions here cited was recognised by *North*, J., in *Re Crawshay*, *Crawshay* v. *Crawshay*, 43 Ch. D. 615, 622, but in that case, upon the construction of the will, the appointment was held to be void. In *Cooke* v. *Cooke*, 38 Ch. D. 202, where there was a gift by will to a daughter absolutely followed by a proviso directing the settlement of her share, the proviso was rejected.

P. 763, line 4.—Where a father, having a power to appoint among his own children, appointed to his son for life and after the son's death to his children as the son should appoint, and in default of appointment to the son absolutely, it was held that the son took absolutely: *Williamson* v. *Farwell*, 35 Ch. D. 128.

Fraud on power.

P. 765, line 29.—After *Daubeny* v. *Cockburn*, add *Whelan* v. *Palmer*, 39 Ch. D. 648.

P. 768, line 8.—Add reference to *Re Crawshay*, *Crawshay* v. *Crawshay*, 43 Ch. D. 615, where *North*, J., commented on and explained the rule laid down in *Re Marsden's Trusts*.

Release of power.

P. 768, line 21.—After *Shirley* v. *Fisher*, add *Re Radcliffe*,

Radcliffe v. *Bewes*, [1892] 1 Ch. 227, C. A., where a fund was settled in trust for the children of A. as he should appoint, and in default of appointment, among the children equally; two children attained 21, one of whom died a bachelor, and intestate; the father then released his power of appointment and called on the trustees to transfer to him a moiety of the fund; it was held that the release was valid, and that the father was entitled to a transfer of such moiety upon executing a surrender of his life interest in the whole fund.

Fraud on power.

P. 768, line 29.—After *Sadler* v. *Pratt*, add *Whelan* v. *Palmer*, 39 Ch. D. 648, 659; *Re Perkins, Perkins* v. *Bagot*, [1893] 1 Ch. 283.

P. 769, line 6.—Add references to *Re Turner's Settled Estates*, 28 Ch. D. 205; *Re Crawshay, Crawshay* v. *Crawshay*, 43 Ch. D. 615.

Succession duty.

P. 774, line 7.—The rule in *Re Barker* and *Attorney-General* v. *Charlton* applies whether the power be joint or sole: *Attorney-General* v. *Mitchell*, 6 Q. B. D. 548.

PRECEDENTS AND NOTES THERETO.

Precedent IV.—Appointment of Portion.

Hotchpot clause.

P. 782, note (*m*).—As to the insertion of a hotchpot clause in the appointment when there is none in the power, see *Re Buckley's Trusts*, W. N. 1893, p. 95.

Precedent X.—Appointment of Gamekeeper.

Fishing rights.

P. 795, note (*u*).—The rule as to rights of fishery as between riparian proprietors and the public would not seem to be quite correctly laid down as it prevails at the present day. The distinction now recognised appears to be between tidal and non-tidal waters, not between navigable and non-navigable waters. Thus it has been laid down in two recent cases that there can be no public right of fishing in non-tidal waters, though such waters may be to some extent navigable. See *Pearce* v. *Scotcher*, 9 Q. B. D. 162; *Smith* v. *Andrews*, [1891] 2 Ch. 678.

P. 796, note (*u*).—After *Corporation of Oxford* v. *Richardson* add *Attorney-General* v. *Emerson*, [1891] A. C. 649.

Precedent XI.—Appointment of Guardian.

Guardianship of infants.

P. 796, note (*x*).—The remarks contained in this note must now be read with reference to the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), the provisions of which are set out *ante*, p. 42.

Leases and sales of infant's lands.

P. 803, note (*x*).—After *Re Letchford* add *Re Griffiths*, 29 Ch. D. 248; *Re Findlay*, 32 Ch. D. 221, 641.

As to the sale of infants' lands with the sanction of the Court under s. 41 of the Conveyancing Act, 1881, and s. 16 of the Settled Estates Act, 1877, see *Re Sparrow's Settled Estate*, [1892] 1 Ch. 412.

Decisions on the construction and effect of sects. 59, 60 of the Settled Land Act, 1882, will be found in Vol. VI. at p. 494, *sub tit.* Settlements.

Appointment of guardian by Court.

R. 806, note (*x*).—In *Re Bourgoise*, 41 Ch. D. 310, C. A., the Court refused to appoint guardians of an infant whose father was a foreigner, who had held the usual qualified certificate of naturalization. The stat. 15 & 16 Vict. c. 80, s. 26, became obsolete by reason of the Guardianship of Infants Act, 1886, and the Rules thereunder, and was repealed by the Statute Law Revision Act, 1892. An application under the Act of 1886 may be made by summons in any pending action or proceeding, or, if no such action or proceeding is pending, by originating summons: see Rule 2.

APPOINTMENT OF NEW TRUSTEES.

STATUTORY POWERS.

Settled Land Act, 1890, s. 17.

P. 8, line 20.—By s. 17 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69), it is enacted as follows :—

Application of provisions of 44 & 45 Vict. c. 41, as to appointment of trustees.

"(1.) All the powers and provisions contained in the Conveyancing and Law of Property Act, 1881, with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of the Settled Land Acts, 1882 to 1890, whether appointed by the Court or by the settlement, or under provisions contained in the settlement.

"(2.) This section applies and is to have effect with respect to an appointment and retirement of trustees taking place before as well as after the passing of this Act.

"(3.) This section is not to render invalid or prejudice any appointment or any discharge and retirement of trustees before the passing of this Act otherwise than under the provisions of the Conveyancing and Law of Property Act, 1881."

This enactment disposes of the doubt raised by *North*, J., in *Re Wilcock*, 34 Ch. D. 508, as to whether s. 31 of the Conveyancing Act, 1881, applies to trustees appointed for the purposes of the Settled Land Acts.

Construction of C. A. 1882, s. 5.

P. 8, line 30.—Some conflict of decision having arisen as to the proper construction of this section (see *Re Paine's Trusts*, 28 Ch. D. 725 ; *Re Hetherington's Trusts*, 34 Ch. D. 211 ; *Savile* v. *Couper*, 36 Ch. D. 520 ; *Re Moss' Trusts*, 37 Ch. D. 513), it was enacted by the Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 6, as follows :—

Trustee may be appointed for separate parts of property though no new trustee be appointed of other parts.

"A separate set of trustees or a separate trustee may be appointed under the 5th section of the Conveyancing Act, 1882, of a part only of the trust property, notwithstanding that no new trustees or trustee are to be appointed of other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees ; and every appointment already made of a separate set of trustees shall be valid, notwithstanding that there was no retiring trustee of other parts of the trust property, and that no new trustees were apppointed of such other part thereof."

C. A. 1881, s. 31, sub-s. (6).

P. 9, line 6.—Where the sole trustee or all the trustees

appointed by the testator die in his lifetime this sub-section does not apply: *Re Ambler's Trusts*, 59 L. T. 210; *Nicholson* v. *Field*, W. N. 1893, p. 62.

P. 10, *ad fin.*—The case of *Re Norris, Allen* v. *Norris*, is now reported 27 Ch. D. 333; see also *Re Coates to Parsons*, 34 Ch. D. 370. Refusal to act.

P. 11, *ad fin.*—After *Att.-Gen.* v. *Pearson*, add *Att.-Gen.* v. *St. John's Hospital, Bath*, 2 Ch. D. 554. Unfitness.

P. 12, line 23.—After *Re Lemann*, add *Re Dewhirst's Trusts*, 33 Ch. D. 416, C. A.; and *Re Martin's Trusts*, 34 Ch. D. 618, C. A., explaining *Re Phelps' Settlement Trusts*, 31 Ch. D. 351, C. A. Infirmity.

P. 14, line 39.—Add reference to *Re Cooper, Cooper* v. *Slight*, 27 Ch. D. 565 (power of advancement with consent of tenant for life). Alienation by donee of power.

P. 15, line 31.—Where the persons nominated by a settlement for the purpose of appointing new trustees were unable to agree as to the person to be appointed, *Stirling*, J., held that the statutory power was exercisable by the legal representatives of the last surviving trustee: *Re Sheppard's Settlement*, W. N. 1888, p. 234. Persons nominated unable to appoint.

The words "personal representatives of the last surviving or continuing trustee" include the executor of a sole trustee: *Re Shafto's Trusts*, 29 Ch. D. 247. As to refusal of executor to exercise power, see *Re Sarah Knight's Will*, 26 Ch. D. 82, C. A.

P. 16, line 5.—*Re Stokes* and *Re Harford* have been disapproved of in several recent cases, see *Re Gardiner's Trusts*, 33 Ch. D. 590, and the cases there cited. Sole trustee.

P. 18, line 13.—*Re Norris, Allen* v. *Norris* is now reported 27 Ch. D. 333. See also *Re Hall, Hall* v. *Hall*, W. N. 1885, p. 17, 51 L. T. 901, 33 W. R. 508. Sanction of Court.

P. 18, line 32.—There is no jurisdiction under the Trustee Acts to appoint a new trustee against the wishes of a sole trustee who is desirous of exercising his statutory power of appointing new trustees under s. 31 of the Conveyancing Act, 1881: *Re Higginbottom*, [1892] 3 Ch. 132.

P. 19, *ad fin.*—Sect. 7 of the Stat. 38 & 39 Vict. c. 77, is repealed by the Lunacy Act, 1890 (53 Vict. c. 5); see now s. 108 of the later Act. Repeal.

P. 22, line 20.—*Re Norris, vide supra.*

P. 22, *ad fin.*—After *Re Parrott*, add *Re Lightbody's Trusts*, *Cestui que trust.*

W. N. 1885, p. 3; 52 L. T. 40; 33 W. R. 452; *Tempest* v. *Lord Camoys*, W. N. 1888, p. 17, 58 L. T. 221.

Donee appointing himself.

P. 23, line 9.—It has since been held by *Kay*, J., that a donee of a power to appoint another person to be a trustee cannot appoint himself, (1) because he is not any other person, (2) because such a power is fiduciary. *Re Skeats' Settlement*, *Skeats* v. *Evans*, 42 Ch. D. 522.

Bare trustee.

P. 24, note (*h*).—As to the meaning of "bare trustee," see also Vol. I., p. 232, and *ante*, p. 27.

Foreigner.

P. 25, line 37.—After *Re Liddiard*, add *Re Fowler's Trusts*, W. N. 1886, p. 183; *Re Freeman's Settlement Trusts*, 37 Ch. D. 148.

Number of trustees.

P. 26, line 23.—After *Re Toutt* (also reported 26 Ch. D. 745, C. A.), add *Re Leon*, [1892] 1 Ch. 348, C. A. See also *Re Lamb's Trusts*, 28 Ch. D. 77.

Sole trustee.

P. 26, line 27.—As to the authority at the present time of the cases here cited, see *ante*, p. 53.

Stamps.

P. 34, line 9.—The stamp on deeds appointing new trustees is now 10*s.*; see Stamp Act, 1891, s. 62. As to separate charges on instruments relating to distinct matters, see s. 4 (a), of the later Act. See *sub tit.* STAMPS, *post*, p. 339.

PRECEDENTS AND NOTES THERETO.

PRECEDENT IV.—PERSONALTY.

Transfer of mortgage.

P. 39, note (*i*).—The reference to *tit.* MORTGAGES is to Vol. III., Precedent LXXXIX., p. 1214.

PRECEDENT XIV.—DISCHARGE OF TRUSTEE.

Erratum.

P. 59, line 10.—The vesting declaration in Precedent XIV. should run as follows:—

"And the said [*continuing and retiring trustees*] and also the said [*appointor*] accordingly hereby declare respectively that" &c.

See Conveyancing Act, 1881, s. 34, sub-s. (2), set out Vol. II., pp. 7, 8.

PRECEDENT XVI.—CONVEYANCE OF LAND FOR CHAPEL.

The Trustees Appointment Act, 1890.

P. 60, note (*s*).—The provisions of Sir M. Peto's Act are extended by the Trustees Appointment Act, 1890 (53 & 54

Vict. c. 19), so as to apply to and include trustees in connection with any society or body comprising several congregations or sections associated for any religious purpose when the land is held in trust for (1) a place of religious worship; (2) an endowment or provision for such place or the minister or expenses thereof; (3) a burial ground; (4) a place for education or training of students; (5) a school house; or (6) the residence of a minister or caretaker or other buildings for religious or educational purposes: s. 2. The statutory powers of appointing new trustees given by the Conveyancing Act, 1881, are made applicable to any of the purposes of Sir M. Peto's Act or the extending Acts: s. 4. The vesting clause of Sir M. Peto's Act is extended so as to apply to appointments to trustees under the Act of 1890: s. 4. The concurrent exercise of powers is provided against: s. 5. Appointments of trustees are to be valid in favour of purchasers and mortgagees after six months, if no proceedings taken: s. 6. Where trustees may be appointed by resolution a memorandum stating that the meeting was duly constituted and otherwise in the form and subscribed in manner prescribed by Sir M. Peto's Act and the schedule thereto is to be of itself sufficient evidence that the appointment was duly made: s. 7.

APPRENTICESHIP.

PRELIMINARY DISSERTATION.

Articles must be reasonable.

P. 67, line 24.—The provisions of articles of apprenticeship must be reasonable or they will not be enforced against the infant or his parent: *De Francesco* v. *Barnum*, 45 Ch. D. 430; *Corn* v *Matthews*, [1893] 1 Q. B. 310, C. A.

Factories.

P. 67, note (*a*).—The Stat. 22 Hen. 8, c. 4, is repealed by the Statute Law Revision Act, 1887. After 41 & 42 Vict. c. 16, add reference to the Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75).

Premium.

P. 67 note (*b*).—In *Walter* v. *Everard*, [1891] 2 Q. B. 369, the Court of Appeal held that a premium covenanted to be paid by an infant was on the footing of a liability for necessaries.

Corporation.

P. 68, line 13.—An apprentice may be bound to a corporation: *Burnley Equitable, &c., Soc.* v. *Casson*, [1891] 1 Q. B. 75.

Repeal.

P. 69, lines 25, 27.—S. 8 of the stat. 6 & 7 Vict. c. 73, and s. 7 of the stat. 23 & 24 Vict. c. 127 are now repealed by the Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 20 and schedule; see now ss. 7, 8, 9 of the later Act.

Misconduct of apprentice.

P. 70, *ad fin.*—After *Raymond* v. *Minton*, add *Learoyd* v. *Brook*, [1891] 1 Q. B. 431.

P. 70, note (*d*).—See now Reserve Forces Act, 1882 (45 & 46 Vict. c. 48).

Contract not for benefit of infant.

P. 74, note (*f*).—The decision in *Meakin* v. *Morris* was approved of by the Court of Appeal in *Corn* v. *Matthews*, [1893] 1 Q. B. 310.

Stamp.

Pp. 74, *et seq.*—The stamp on articles of apprenticeship is now 2*s.* 6*d.* except in cases specially exempted; no stamp is payable in respect of premium. The exemptions are similar to those mentioned in the schedule to the Stamp Act, 1870; see the Stamp Act, 1891, s. 25, and schedule; and see further, *post*, p. 354, *sub tit.* STAMPS.

P. 76, line 36.—For "s. 3 of the Stamp Act, 1870," read now "s. 1 of the Stamp Act, 1891."

PRECEDENTS AND NOTES THERETO.

PRECEDENT II.—APPRENTICESHIP TO SEA SERVICE.

Fishing boats.

P. 79, note (*a*).—As to apprenticeship to service in fishing boats, see the Merchant Shipping (Fishing-boats) Act, 1883 (46 & 47 Vict. c. 41), which Act gives a specimen of an apprenticeship indenture.

PRECEDENT VII.—ARTICLES OF CLERKSHIP TO A SOLICITOR.

Agreement not to take solicitor's clients.

Pp. 91, 92.—As to the construction of a covenant in articles of clerkship that the clerk would not "take clients" of the solicitor, nor "transact any business for them or any of them," see *Hayne* v. *Burchell*, W. N. 1890, p. 207, C. A. Country solicitors are "clients" of their London agent within the meaning of such a covenant: *Reid* v. *Burrows*, [1892] 2 Ch. 413. As to the liability of a surety who has given a bond to secure that an articled clerk shall not practise after admission, in competition with a solicitor, see *Richards* v. *Whitham*, 66 L. T. 695, C. A.

ARBITRATION.

PRELIMINARY DISSERTATION.

The Arbitration Act, 1889.

Pp. 94 to 199.—The remarks contained in this Dissertation, as also those in the notes to the following Precedents, must now be read with reference to the provisions of the Arbitration Act, 1889 (52 & 53 Vict. c. 49), which is as follows:—

Arbitration Act, 1889.

An Act for amending and consolidating the Enactments relating to Arbitration. [26th August, 1889.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

References by Consent out of Court.

Submission to be irrevocable, and to have effect as an order of Court.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect in all respects as if it had been made an order of Court.

Provisions implied in submissions.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission.

Reference to official referee.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the Court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

Power to stay proceedings where there is a submission.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still

remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power for the Court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

5. In any of the following cases:—

(*a.*) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator:

(*b.*) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy:

(*c.*) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him:

(*d.*) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy:

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the Court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to supply vacancy.

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

(*a.*) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(*b.*) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court or a judge may set aside any appointment made in pursuance of this section.

Powers of arbitrator.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

(*a.*) to administer oaths to or take the affirmations of the parties and witnesses appearing; and

(*b.*) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

(*c.*) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Witnesses may be summoned by subpœna.

8. Any party to a submission may sue out a writ of *subpœna ad testificandum*, or a writ of *subpœna duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

Power to enlarge time for making award.

9. The time for making an award may from time to time be enlarged by order of the Court or a judge, whether the time for making the award has expired or not.

Power to remit award.

10.—(1.) In all cases of reference to arbitration the Court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2.) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

Power to set aside award.

11.—(1.) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

(2.) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

Enforcing award.

12. An award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect.

References under Order of Court.

Reference for report.

13.—(1.) Subject to Rules of Court and to any right to have particular cases tried by a jury, the Court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee.

(2.) The report of an official or special referee may be adopted wholly or partially by the Court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Power to refer in certain cases.

14. In any cause or matter (other than a criminal proceeding by the Crown),—

(*a.*) If all the parties interested who are not under disability consent: or,

(*b.*) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court or a judge conveniently be made before a jury or conducted by the Court through its other ordinary officers: or,

(*c.*) If the question in dispute consists wholly or in part of matters of account:

the Court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court.

Powers and remuneration of referees and arbitrators.

15.—(1.) In all cases of reference to an official or special referee or arbitrator under an order of the Court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by Rules of Court, and subject thereto as the Court or a judge may direct.

(2.) The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the Court or a judge, be equivalent to the verdict of a jury.

(3.) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the Court or a judge shall be determined by the Court or a judge.

Court to have powers as in references by consent.

16. The Court or a judge shall, as to references under order of the Court or a judge, have all the powers which are by this Act conferred on the Court or a judge as to references by consent out of Court.

Court of Appeal to have powers of Court.

17. Her Majesty's Court of Appeal shall have all the powers conferred by this Act on the Court or a judge thereof under the provisions relating to references under order of the Court.

General.

Power to compel attendance of witness in any part of the United Kingdom, and to order habeas corpus to issue.

18.—(1.) The Court or a judge may order that a writ of *subpœna ad testificandum* or of *subpœna duces tecum* shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.

(2.) The Court or a judge may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

Statement of case pending arbitration.

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

Costs.

20. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

Exercise of powers by masters and other officers.

21. Provision may from time to time be made by Rules of Court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the Court or a judge.

Penalty for perjury.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

Crown to be bound.

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the Court or a judge to order any proceedings to which Her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of Her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown.

Application of Act to references under statutory powers.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act.

Saving for pending arbitrations.

25. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

Repeal.

26.—(1.) The enactments described in the Second Schedule to this Act are hereby repealed to the extent therein mentioned, but this repeal shall not affect anything done or suffered, or any right acquired or duty imposed or liability incurred, before the commencement of this Act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability.

(2.) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

Definitions.

27. In this Act, unless the contrary intention appears,—

"Submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

"Court" means Her Majesty's High Court of Justice.

"Judge" means a judge of Her Majesty's High Court of Justice.

"Rules of Court" means the Rules of the Supreme Court made by the proper authority under the Judicature Acts.

Extent.

28. This Act shall not extend to Scotland or Ireland.

Commencement.

29. This Act shall commence and come into operation on the first day of January one thousand eight hundred and ninety.

Short title.

30. This Act may be cited as the Arbitration Act, 1889.

SCHEDULES.

THE FIRST SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator.

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.

g. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
9 Will. 3, c. 15 .	An Act for determining differences by arbitration.	The whole Act.
3 & 4 Will. 4, c. 42 .	An Act for the further amendment of the law and the better advancement of justice.	Sections thirty-nine to forty-one, both inclusive.
17 & 18 Vict. c. 125 .	The Common Law Procedure Act, 1854.	Sections three to seventeen, both inclusive.
36 & 37 Vict. c. 66 .	The Supreme Court of Judicature Act, 1873.	Section fifty-six, from "Subject to any Rules "of Court" down to "as a judgment by the "Court," both inclusive, and the words "special referees or." Sections fifty-seven to fifty-nine, both inclusive.
47 & 48 Vict. c. 61 .	The Supreme Court of Judicature Act, 1884.	Sections nine to eleven, both inclusive.

SUBMISSIONS TO ARBITRATION GENERALLY.

Repeals.

P. 94, note (*a*).—Sects. 56—59 of the Judicature Act, 1873, are repealed, *vide supra*. See now the corresponding sects. 13—17 of the Act of 1889.

Repeal.

P. 96, line 1.—Sect. 11 of the C. L. P. Act, 1854, is repealed, *vide supra*. See now sect. 4 of the Act of 1889.

P. 96, line 18.—The Court has jurisdiction to restrain a party from proceeding to arbitration, and will exercise such jurisdiction in a proper case, as where an arbitration would cause injury to the party complaining: *Farrar* v. *Cooper*, 44 Ch. D. 323.

Railway company.

P. 96, line 33.—After *Watford Rail. Co. & N. W. Rail. Co.*, add *London, Chatham, & Dover Rail. Co.* v. *S. E. Rail. Co.* (No. 1), 40 Ch. D. 100, C. A.

Reference for report.

P. 97, note (*c*).—As to the power of the Court to order

references to an official or special referee, see now s. 13 of the Act of 1889, *supra*. The stat. 47 & 48 Vict. c. 61, s. 9, is repealed.

Stay of proceedings.

P. 99, line 6.—This section is repealed; as to stay of proceedings see now s. 4 of the Act of 1889. The Court will not stay proceedings where the subject-matter in dispute is partly outside the terms of the submission: *Turnock* v. *Sartoris*, 43 Ch. D. 150, C. A.

Submission, meaning of.

P. 99, note (*d*).—S. 11 of the Jud. Act, 1884, is repealed; all written agreements for reference to arbitration are "submissions" within the meaning of the Act of 1889, see s. 27. A policy of fire insurance containing an arbitration clause, although not signed by the party insured, is a "submission" within this section: *Baker* v. *Yorkshire Fire & Life Ass. Co.*, [1892] 1 Q. B. 144.

Revocation of submission.

P. 100, line 1.—After *Randell* v. *Thompson*, add *Deutsche, &c., Gesellschaft* v. *Briscoe*, 20 Q. B. D. 177. But a submission is now irrevocable, except by leave of the Court or a judge: see s. 1 of the Act of 1889, *supra*.

Power to stay proceedings is discretionary.

P. 100, line 35.—The power of the Court to stay proceedings is discretionary, and will not be exercised when injustice is likely to result: see *Lyon* v. *Johnson*, 40 Ch. D. 579; *Re Carlisle, Clegg* v. *Clegg*, 44 Ch. D. 200, a case under the Act of 1889; see also *Fox* v. *Railway Passengers' Assce. Co.*, 52 L. T. 672, C. A., a case under the Railway Passengers' Assurance Act, 1864 (27 & 28 Vict. c. cxxv.). As to what is a "step in the proceedings" within s. 4 of the Act of 1889, see *Chappell* v. *North*, [1891] 2 Q. B. 252; *Adams* v. *Catley*, 66 L. T. 687, 40 W. R. 570.

P. 101, line 19.—The stat. 9 & 10 Will. 3, c. 15, is wholly repealed, *supra*.

Arbitration precedent to right of action.

P. 103, note (*h*).—After *Edwards* v. *Aberayron Mutual Ship Insce. Co.* add *Trainor* v. *Phœnix Fire Ass. Co.*, 65 L. T. 825; *Scott* v. *Mercantile Accident, &c., Insce. Co.*, 66 L. T. 811, C. A.

Repeals.

Pp. 104—106.—Sects. 39 to 41 inclusive of the stat. 3 & 4 Will. 4, c. 32, are repealed, *vide supra*. No submission is now revocable without leave of the Court: see s. 1 of the Act of 1889. As to the power to compel attendance of witnesses

and production of documents see ss. 8, 18 of the same Act. As to the power of arbitrators to administer oaths, &c., see s. 7 of the same Act. A submission was always irrevocable in the sense that damages might be claimed for breach of the agreement; the effect of s. 1 is to make the *authority of arbitrators*, when once they have been appointed, irrevocable, and accordingly where an agreement provided for reference to three arbitrators, one of whom was to be appointed by each of the parties, and the third by the two so appointed, and one of the parties refused to appoint his arbitrator, it was held that the Court had no power under or apart from the Act of 1889 to order him to do so: *Re Smith and Service*, 25 Q. B. D. 545, C. A. It is to be observed that neither s. 5 nor s. 6 meets such a case.

Refusal of party to appoint arbitrator.

P. 106, lines 4 *et seq.*—The Act of 1889, no less than the repealed stats. of Will. III. and Will. IV., apparently applies to civil proceedings only; and, accordingly, the cases here cited would appear to be still in point. After *Keir* v. *Leeman* add *Windhill Local Board* v. *Vint*, 45 Ch. D. 351, C. A.

Criminal matters.

P. 107, line 22.—S. 17 of the C. L. P. Act, 1854, and s. 11 of the Jud. Act, 1884, are repealed, *vide supra*. By s. 1 of the Act of 1889 every submission, unless a contrary intention is expressed therein, is to have the same effect as if made an order of Court.

Order of Court.

Pp. 108, 109.—Sects. 12, 13 of the C. L. P. Act, 1854, are repealed, *vide supra*. The provisions of these repealed sections are virtually re-enacted by ss. 5 & 6 of the Act of 1889. In a case which falls within this application of s. 5, as a general rule the Court has no discretion to refuse to appoint an arbitrator: *Re Eyre and Corporation of Leicester*, [1892] 1 Q. B. 136, C. A. It has been held that the Court has no jurisdiction under s. 5 to appoint an arbitrator where the submission provides for appointment of an arbitrator, and the person so appointed objects to act unless appointed by judge's order: *Re Wilson and Eastern Counties Navig., &c., Co.*, [1892] 1 Q. B. 81, affirmed 8 T. L. R. 264.

Refusal of arbitrator to act.

After *Bos* v. *Helsham* add *Re Dawdy*, 15 Q. B. D. 426, C. A.; and after *Fraser* v. *Ehrensberger* add *Re Smith*

Reference as to compensation no arbitration.

and Service, supra; Re Hammond and Waterton, 62 L. T. 808.

SUBMISSIONS UNDER SPECIAL STATUTORY ENACTMENTS.

Lands Clauses Acts.

P. 109, line 32.—After *Rhodes* v. *Airedale Drainage Commissioners*, add *Bidder* v. *North Staffordshire Rail. Co.*, 4 Q. B. D. 412, C. A.

P. 111, lines 31, 32.—The words in s. 28, "in any case" to "in any other case" are repealed by the Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15).

P. 113, *ad fin.*—The word "taken" in s. 68 of the Lands Clauses Act, 1845, means "actually taken": *Reg.* v. *Manley-Smith, Re Church and London School Board*, 67 L. T. 197, 40 W. R. 333.

Railway Acts.

P. 114, line 27.—The Regulation of Railways Act, 1873, is made perpetual by the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 47.

P. 114, line 34.—After *Great Western Rail. Co.* v. *Waterford, &c., Rail. Co.*, add *Reg.* v. *Midland Rail. Co.*, 19 Q. B. D. 540.

Artizans' Dwellings Acts.

P. 114, *ad fin.*—The stats. 38 & 39 Vict. c. 36; 42 & 43 Vict. cc. 63, 64; 45 & 46 Vict. c. 54, are repealed by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70); see the 2nd Schedule to this Act for provisions as to arbitration.

Factory Acts.

P. 115, line 1.—After 41 Vict. c. 16, add reference to the Factory and Workshop Act, 1891 (54 & 55 Vict. c. 75).

Building Society.

P. 115, line 4.—Sect. 19 of the Arbitration Act, 1889 (*supra*), applies to arbitrations under the Building Societies Act, 1874: *Tabernacle Permanent Building Society* v. *Knight*, [1892] A. C. 298.

Agricultural Holdings Act, 1883.

P. 116, line 17.—As to the meaning of "determination of the tenancy" in s. 7 of the Agricultural Holdings Act, 1883, see *Re Paul, Ex parte the Earl of Portarlington*, 24 Q. B. D. 247.

REVOCATION OF SUBMISSION.

Bias of arbitrator.

P. 130, *ad fin.*—After *Jones* v. *Attwood* add *Re Baring Brothers and Doulton & Co.*, 61 L. J. Q. B. 704.

Submissions now irrevocable.

P. 131, line 16.—After *Re Fraser & Ehrensberger,* add *Re Mitchell, &c., and Governor of Ceylon,* 21 Q. B. D. 408, C. A. All submissions are now irrevocable, unless a contrary intention is expressed therein, except by leave of the Court or a judge, and have the same effect in all respects as if they had been made orders of Court: see Arbitration Act, 1889, s. 1, *supra.* The suggestion in note (*z*) accordingly becomes obsolete.

Death of party.

P. 131, note (*s*).—After *Re Hare and Milne,* add *Re Carlisle, Clegg* v. *Clegg,* 44 Ch. D. 200.

Appointment of Umpire.

P. 134, line 11.—After *Cudliff* v. *Walters,* add *Shepherd* v. *Corporation of Norwich,* 30 Ch. D. 553.

Power for arbitrators to appoint umpire.

P. 135, *ad fin.*—Sect. 14 of the Common Law Procedure Act, 1854, is repealed, *vide supra.* This rule is virtually re-enacted by the 1st Schedule (b) to the Arbitration Act, 1889.

Appointment by lot.

P. 137, line 35.—After *Re Hopper,* add *Smith* v. *Liverpool, &c., Insurance Co.,* 14 Ct. of Sess. Ca. 931. Where each of two arbitrators nominated an umpire who was unknown to the other arbitrator, and decided the choice by lot, it was held that, the arbitrators not knowing whether the persons respectively nominated by each other were fit to act as umpire, the appointment was bad: *Pescod* v. *Pescod,* W. N. 1888, p. 2, 58 L. T. 76.

Time for making the Award.

Limitation of time.

P. 145, line 8.—Sect. 15 of the Common Law Procedure Act, 1854, is repealed, *supra.* The rule as to the period within which the award is to be made is re-enacted by Schedule 1 (c), to the Arbitration Act, 1889; but the rule may be modified or excluded by the terms of the submission, see s. 2 of the Act. Schedule 1 (d) and (e) of this Act, re-enacts the provisions as to the powers of an umpire contained in the latter part of s. 15 of the Act of 1854.

Enlargement of time.

P. 147, line 34.— Arbitrators have now power, unless a contrary intention is expressed in the submission, from time

to time to enlarge the time for making the award: see s. 2 and Schedule 1 (c) of the Arbitration Act, 1889, *supra*. The Court has power to enlarge the time for making the award, though the time has been expired, see s. 9 of the Act. This enactment affirms the effect of s. 15 of the Common Law Procedure Act, 1854, as construed in *Lord* v. *Lea*, L. R. 3, Q. B. 404, and *May* v. *Harcourt*, 13 Q. B. D. 688.

Substance and Validity of the Award.

Dissolution of partnership.

P. 164, lines 15 *et seq.*—The question as to whether a reference of all differences between partners empowers the arbitrators to award a dissolution has arisen in several recent cases. The rule laid down in *Green* v. *Waring* was that, in such a case, the arbitrator awarding a dissolution had *not* exceeded his power; and the question of dissolution has been held to be included by the terms of the usual arbitration clause in *Russell* v. *Russell*, 14 Ch. D. 471; but *Kay*, J., in *Joplin* v. *Posthlewaite*, 61 L. T. 629, C. A., and *Kekewich*, J., in *Turnell* v. *Sanderson*, W. N. 1891, p. 71, 64 L. T. 654, have expressed a strong opinion that a dissolution is not within such a clause, but is properly one for the decision of the Court. However, in *Walmsley* v. *White*, 67 L. T. 433, 40 W. R. 675, C. A., the Court of Appeal held that the clause empowers an arbitrator to award a dissolution, but that the Court has nevertheless discretion to refuse to stay proceedings in an action for dissolution.

Costs.

P. 168, *ad fin*, **and p. 169.**—By Schedule 1 (*i*) to the Act of 1889 (*ante*, p. 62), the costs of the reference and award are in the discretion of the arbitrators or umpire: see *Re Williams and Stepney*, [1891] 2 Q. B. 257; *Re Prebble and Robinson*, [1892] 2 Q. B. 602.

Remuneration of arbitrators, &c.

P. 176, *ad fin.*—After *Hoggins* v. *Gordon*, add *Crampton & Holt* v. *Ridley & Co.*, 20 Q. B. D. 48, where *A. L. Smith*, J., expressed his opinion, that, if the question were to come before a Court of Review at the present day, it would be held that a reference to arbitration raises an implied promise to pay a reasonable remuneration to the arbitrators and umpire for their trouble.

Statement of case.

Pp. 181, 182.—As to statement by arbitrator of a case on a question of law for the opinion of Court, see s. 19 of the Act

of 1889, *ante*, p. 60; and see *Re Knight and Tabernacle Permanent Building Society*, [1892] A. C. 298; *Re Kirk-Leatham Local Board and Stockton, etc. Board*, [1893] 1 Q. B. 375, C. A.

Misconduct by arbitrator.

P. 184, note (*a*).—Evidence of an admission out of Court by an arbitrator that he made his award improperly, *e. g.*, by collusion or for a bribe, is not admissible on a motion to set aside the award: *Re Whiteleys and Roberts' Arbitration*, [1891] 1 Ch. 558. The parties may by the terms of their submission preclude themselves from setting aside the award on the ground of fraud on the part of the arbitrator: *Tullis* v. *Jacson*, [1892] 3 Ch. 441.

The fact that an arbitrator has, before entering on the reference, expressed his opinion as to the matter in dispute does not necessarily disqualify him from acting as arbitrator so as to entitle a party to an injunction to restrain the other party from proceeding further with the arbitration: *Jackson* v. *Barry Rail. Co.*, [1893] 1 Ch. 238, C. A.

Erratum.

P. 188, note (*c*).—For "13 Q. B. D." read "3 Q. B. D."

Practice.

As to the practice under Ord. LXIV. r. 14, see *Re Oliver and Scott*, 43 Ch. 310; *Re Gallop and Central Queensland, &c., Co.*, 25 Q. B. D. 230.

Performance of Award.

Enforcing award.

P. 191, line 14.—Sect. 16 of the Common Law Procedure Act, 1854, is repealed. As to enforcement of awards, see now s. 12 of the Arbitration Act, 1889, *supra*.

P. 193, line 2.—Where an agreement upon a purchase of land provided for reference to arbitration of the amount of compensation to be paid to the tenant for disturbance and for certain crops, it was held that the assessment was a valuation and not an award enforceable by execution under the Arbitration Act, 1889: *Re Hammond and Waterton*, 62 L. T. 808.

Stamps.

Pp. 198, 199.—The Stamp Act, 1870, is repealed by the Stamp Act, 1891 (54 & 55 Vict. c. 39), but the duties on awards imposed by the repealed Act are re-enacted without alteration, see *post, sub tit.* Stamps.

PRECEDENTS AND NOTES THERETO.

PRECEDENTS I—V.—SUBMISSIONS.

General remarks.

Pp. 200 to 210.—In using any of these Precedents of submissions to arbitration it should be borne in mind that the Arbitration Act, 1889, now generally renders unnecessary the insertion in such instruments of any clauses providing for any of the following matters:—

(1) That the submission shall be irrevocable and be made a rule of Court: see s. 1.
(2) That the arbitrators may appoint an umpire: Schedule 1 (*b*).
(3) That arbitrators or umpires shall make their award within a specified time, or enlarge the time for making the award: Schedule 1 (*c*), (*e*).
(4) That on default or disagreement of the arbitrators, the umpire may enter upon the reference: Schedule 1 (*d*).
(5) That the arbitrators or umpire may compel the parties to the reference to give evidence and produce documents, &c.: Schedule 1 (*f*).
(6) That the arbitrators or umpire may take evidence on oath: Schedule 1 (*g*).
(7) That the award shall be binding and conclusive: Schedule 1 (*h*).
(8) As to costs.

Making award Order of Court.

P. 201, note (*c*).—After *Jones* v. *Jones*, add *Re Gifford and Bury Town Council*, 20 Q. B. D. 368. The former decision was under the repealed enactment of s. 17 of the Common Law Procedure Act, 1854; and the latter was under R. S. C. Ord. LXI. r. 15, which is repealed so far as relates to arbitrations by the R. S. C. Dec. 1889, r. 11.

PRECEDENT XXXVII.—AWARD BETWEEN SOLICITOR AND CLIENT.

P. 233, note (*y*).—After *Re Boughton*, add *Gerty* v. *Mann*, 29 L. R. Ir. 7; *Boden* v. *Hensby*, [1892] 1 Ch. 101. As to Solicitor's lien, see further *sub tit.* MORTGAGES, Vol. III. pp. 646 *et seq.*, and see *post*, p. 163.

ATTESTATION.

PRECEDENTS AND NOTES THERETO.

Erratum. **P. 253, note** (*a*).—For "41 & 42 Vict. c. 31, s. 10," read "45 & 46 Vict. c. 43, s. 10."

Repeal. Sect. 26 of the Common Law Procedure Act, 1854 (here stated) is repealed by the Statute Law Revision Act, 1892.

Erasures, &c., after execution. **P. 254, note** (*b*).—See, as to the effect of erasures, &c., after execution of instruments, *Suffell* v. *Bank of England*, 9 Q. B. D. 555, C. A., where *Jessel*, M. R., fully considered the general law on this subject.

Filling in blanks. **P. 257, note** (*b*).—As to the necessity of re-delivery of an instrument after blanks therein have been filled up, see *Société Générale de Paris* v. *Walker*, 11 App. Cas. 20; see also *Magnus* v. *Queensland National Bank*, 36 Ch. D. 25, 37 Ch. D. 466, C. A.

Deed executed by illiterate person. **P. 260, note** (*g*).— After *Bennett* v. *Vade*, add *National Provincial Bank of England* v. *Jackson*, 33 Ch. D. 1, 13, C. A.

Deed operates from delivery. **P. 266, note** (*k*).—After *Doe* d. *Garnons* v. *Knight*, add *Xenos* v. *Wickham*, L. R. 2 H. L. 296.

BOND.

PRELIMINARY DISSERTATION.

Of Bonds Generally.

Sealing essential to bond. **P. 270, line 5.**—Sealing of a bond is essential to enable the obligee to enforce it; so where a bond duly stamped purported to have been sealed and delivered by the obligor, but it did not appear that any seal or wafer had ever been affixed to the instrument; it was held that the Court could not pre-

sume that the bond had ever been sealed, and that the obligee was not entitled to enforce it: *Re Smith, Oswell* v. *Shepherd*, 67 L. T. 64, C. A.

Contracts by infants.

P. 271, note (*c*).—After *Northcote* v. *Doughty*, add *Holmes* v. *Brierley*, W. N. 1888, p. 158, 36 W. R. 795 (C. A.). See also the observations on the decision of *Jessel*, M.R., in *Ex parte Jones*, made by *Kekewich*, J., in *Duncan* v. *Dixon*, 44 Ch. D. 211, where it was held that a settlement made by an infant on marriage not within s. 1 of the Infant's Relief Act, 1874, and consequently is, as regards the infant, voidable, not void.

Necessaries.

P. 272, line 40.—When an infant is sued for goods supplied to him on credit, evidence is admissible to show that the goods were not necessaries, inasmuch as, at the time of the sale, he was sufficiently supplied with similar goods: *Barnes & Co.* v. *Toye*, 13 Q. B. D. 410; *Johnstone* v. *Marks*, 19 Q. B. D. 509, C. A. As to bill of exchange for necessaries, see *Re Soltykoff, Ex parte Margrett*, [1891] 1 Q. B. 413, C. A.

Bond to several obligees.

P. 274, line 17.—As to accord and satisfaction to one of two obligees, see *Steeds* v. *Steeds*, 22 Q. B. D. 537.

The Betting and Loans (Infants) Act, 1892 (55 Vict. c. 4), provides that persons sending to infants circulars, &c., inciting to betting, or inciting to borrow money, are to be guilty of misdemeanour: see ss. 1 and 2. And by s. 5 of that Act it is enacted as follows:—

Avoiding contract for payment of loan advanced during infancy.

"If any infant, who has contracted a loan which is void in law, agrees after he comes of age to pay any money which in whole or in part represents or is agreed to be paid in respect of any such loan, and is not a new advance, such agreement, and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement, or otherwise in relation to the payment of money representing or in respect of such loan, shall, so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, be void absolutely as against all persons whomsoever.

"For the purposes of this section any interest, commission, or other payment in respect of such loan shall be deemed to be a part of such loan."

Principal and Surety.

Surety's implied right to indemnity.

P. 281, line 15.—After *Duffield* v. *Scott* add *Ex parte Bishop, Re Fox, Walker & Co.*, 15 Ch. D. 400, C. A., where the previous case and the general law on the subject are reviewed.

P. 281, line 21.—After *Hodgson* v. *Shaw*, add *Badeley* v. *Consolidated Bank*, 34 Ch. D. 536, at p. 556, per *Stirling*, J. (reversed on appeal on another point, 38 Ch. D. 238). Surety simple contract creditor of principa.

P. 282, note (*i*).—Add reference to *Re Walker, Sheffield Banking Co.* v. *Clayton*, [1892] 1 Ch. 621. Collateral securities.

P. 284, line 12.—After *Williams* v. *Rawlinson*, add *Re Sherry, London & County Banking Co.* v. *Terry*, 25 Ch. D. 692, C. A. Appropriation of payments.

P. 285, *ad fin.*.—After *Atkins* v. *Arcedeckne*, add *Berridge* v. *Berridge*, 44 Ch. D. 168, where *North*, J., elaborately discussed the principle here laid down. Contribution between co-sureties.

P. 287, line 7.—After *Oriental Financial Corporation* v. *Overend, Gurney & Co.*, add *Bolton* v. *Buckenham*, [1891] 1 Q. B. 278, C. A. The giving of time to the principal debtor will not only discharge the surety from all personal liability, but will also release any property which the surety has included in his contract as security for the debt: *Bolton* v. *Salmon*, [1891] 2 Ch. 48. Discharge of surety.

P. 287, line 27.—After *Small* v. *Currie*, add *Holme* v. *Brunskill*, 3 Q. B. D. 495, C. A.; *Taylor* v. *Bank of New South Wales*, 11 App. Cas. 596, P. C.; *Barber* v. *Mackrell*, W. N. 1892, p. 133, C. A. Alteration of surety's position.

P. 287, line 36.—After *Thomas* v. *Cook*, add *Wildes* v. *Dudlow*, L. R. 19 Eq. 198, and see *ante*, p. 31.

P. 288, line 23.—If a contract to give time to the principal debtor is made not with him but with one of several sureties, the co-sureties will not be released: *Clarke* v. *Birley*, 41 Ch. D. 422.

P. 289, line 3.—Mere passive acquiescence in acts which are contrary to the strict conditions of the bond or otherwise improper on the part of the principal will discharge the surety: see *Mayor, &c., of Durham* v. *Fowler*, 22 Q. B. D. 394; *Mayor, &c., of Kingston-upon-Hull* v. *Harding*, [1892] 2 Q. B. 494, C. A. Laches of creditor.

P. 289, *ad fin.*.—After *Wulff* v. *Jay*, add *Rainbow* v. *Juggins*, 5 Q. B. D. 138. Negligence of creditor.

P. 291, line 18.—A creditor must not do anything to prejudice the right of contribution between co-sureties, or the Release of co-surety.

sureties will be released wholly or *pro tanto*, as the case may be: *Re Wolmershausen, Wolmershausen* v. *Wolmershausen*, 62 L. T. 541, 38 W. R. 537.

Payment or release of debt.

P. 292, line 15.—After *Green* v. *Wynne*, add *Re Whitehouse, Whitehouse* v. *Edwards*, 37 Ch. D. 683.

Penalties of Bonds.

Interest beyond penal sum.

P. 297, line 2.—After *Walters* v. *Meredith*, add *Hatton* v. *Harris*, [1892] A. C. 547, H. L. Ir.

Penalties and liquidated damages.

P. 298, line 32.—After *Fletcher* v. *Dyche*, add *Wallis* v. *Smith*, 21 Ch. D. 243, C. A.; *Lord Elphinstone* v. *Monkland Iron & Coal Co.*, 11 App. Cas. Sc. 332; *Law* v. *Local Board of Redditch*, [1892] 1 Q. B. 127, C. A.

Construction of Condition.

Effect of recitals.

P. 304, line 27.—The principle laid down in *Lord Arlington* v. *Merricke* was adopted in *Danby* v. *Coutts & Co.*, 29 Ch. D. 500, 515, and was applied to the case of a power of attorney, see Vol. IV., p. 908, *sub tit.* Powers of Attorney.

P. 306, line 8.—Sect. 4 of the Mercantile Law Amendment Act (here set out) has been repealed by the Partnership Act, 1890 (53 & 54 Vict. c. 39), but its provisions have been substantially re-enacted by s. 18 of the later Act, which is as follows:—

Revocation of continuing guaranty by change of firm.

"A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which or of the firm in respect of the transactions of which the guaranty or obligation was given."

Illegal Conditions and Contracts.

Conditions against the law

P. 309, line 19.—After *Amicable Society* v. *Bolland*, add *Cleaver* v. *Mutual Reserve Fund Life Association*, [1892] 1 Q. B. 147, C. A.

—against public duty, &c.

P. 309, *ad fin.*—After *Garth* v. *Earnshaw*, add *Jones* v. *Merionethshire Permanent Benefit Building Society*, [1892] 1 Ch. 173, C. A.

Severable contracts.

P. 311, line 37.—After *Shackell* v. *Rosier*, add *Lound* v. *Grimwade*, 39 Ch. D. 605.

Bonds of Resignation.

P. 318, line 37.—A present resignation by deed is irrevocable, notwithstanding that the Ordinary agrees to postpone formal acceptance thereof: *Reichel* v. *Bishop of Oxford*, 14 App. Cas. 259. Revocation before acceptance of resignation.

Conditions in Restraint of Marriage.

P. 321, line 31.—After *Westmeath* v. *Westmeath*, add *Re Moore, Trafford* v. *Maconochie*, 39 Ch. D. 116, C. A. Separation of husband and wife.

See further, as to bequests on conditions in restraint of marriage, Jarman on Wills (5th ed. by Robbins), Vol. II. pp. 885 *et seq.* Conditions in restraint of marriage.

P. 322, note (*l*).—The reference to *tit.* Wills is to Vol. VII. p. 884, *n.*

Bonds, &c., Given to a Kept Mistress.

P. 323, line 35.—Where a bond, containing no reference to cohabitation, is given to a kept mistress, the continuance of the cohabitation is not of itself sufficient to raise a presumption that the bond is given in consideration of a continuance of the connexion: *Re Vallance, Vallance* v. *Blagden*, 26 Ch. D. 353. Immoral consideration.

P. 327, line 32.—As to there being no copyright in immoral works, see *sub tit.* Patent and Copyright, Vol. IV., p. 695.

Bonds for Gaming Debts.

P. 327, *ad fin.*—The 9th Anne, c. 14 (c. 19 in Statutes at Large), is amended by the stat. 5 & 6 Will. IV. c. 41, so far as relates to notes, bills, or mortgages given for considerations arising out of illegal transactions. But the law as to bonds appears to be unaffected by this Act. Stat. 5 & 6 Will. 4, c. 41.

An action cannot be maintained by the principal against his agent for failure to make bets pursuant to the principal's instructions: *Cohen* v. *Kittell*, 22 Q. B. D. 680.

P. 328, line 34.—Where an agent was employed to make a bet in his own name on behalf of the principal, it was held that, under the circumstances, the employment implied an authority to pay the bet if lost, and that when the bet had Employment of agent to bet.

once been made, such authority was irrevocable: *Read* v. *Anderson*, 13 Q. B. D. 779, C. A. See also *Britton* v. *Cook*, W. N. 1887, p. 116.

Now, however, by the Gaming Act, 1892 (55 & 56 Vict. c. 9), it is enacted as follows:—

Promises to repay sums paid under contracts void by 8 & 9 Vict. c. 139, to be null and void.

"Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by the Act of 8 & 9 Vict. c. 109, or to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such contract or of any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money."

The Act has been applied so as to refuse any remedy to an agent who had paid money on express instructions from his principal though it was not stated in the affidavits that the agent had any knowledge that the money was paid in respect of debts: *Tatam* v. *Reeve*, [1893] 1 Q. B. 44. The Act has been held not to be retrospective: *Knight* v. *Lee*, [1893] 1 Q. B. 41.

Bonds, &c., in Restraint of Trade.

Restriction unlimited as to space and time.

P. 330, line 26.—After *Rousillon* v. *Rousillon*, add *Jacoby* v. *Whitmore*, 49 L. T. 335, 32 W. R. 18, C. A.; *Hill & Co.* v. *Hill*, 55 L. T. 769, 35 W. R. 137; *Mills* v. *Dunham*, [1891] 1 Ch. 576, C. A.; *Badische Anilin & Soda Fabrik* v. *Schott*, [1892] 3 Ch. 447. The insertion of the words "so far as the law allows," in a general covenant in restraint of trade, is too vague to validate the covenant, at all events if the restraint is not required for the reasonable protection of the covenantee; indeed, in that case, *Cotton*, L.J., expressed his opinion that the old rule, that all general and unlimited covenants in restraint of trade are void is still in force: *Davies* v. *Davies*, 36 Ch. D. 359, 381, C. A. A covenant precluding a person from carrying on any business whatever is void, although limited as to both space and time: *Baker* v. *Hedgecock*, 39 Ch. D. 520. See also *Vernon* v. *Hallam*, 34 Ch. D. 748, 751; *Perls* v. *Saalfeld*, [1892] 2 Ch. 149, C. A. In some cases the Courts have put a limited construction, on the context, on covenants which in terms precluded the covenantor from carrying on any trade or business:

Moenich v. *Fenestre*, 67 L. T. 602, C. A.; *Fairbrother* v. *England*, 40 W. R. 220.

Restriction as to particular customers.

P. 331, line 24. — In *Mills* v. *Dunham*, *supra*, it was held that an agreement unlimited as to space and time by a traveller not to solicit orders from customers of his employers after termination of the employment was valid and could be enforced. In that case, the principles governing agreements in restraint of trade are very fully considered. See also *Baines* v. *Geary*, 35 Ch. D. 154. The benefit of a covenant not to solicit customers will pass to a purchaser of the covenantee's business without specific assignment thereof: *Batho* v. *Tunks*, W. N. 1892, p. 101.

Restrictions must be reasonable.

Pp. 332, 333.—On the general question that stipulations in restraint of trade must be reasonable, and not in excess of what is necessary for the protection of the interests of the person with whom the stipulation is made, see *Rogers* v. *Maddocks*, [1892] 3 Ch. 346, C. A., in which case it was also held that such stipulations, if severable, may be enforced in part, and rejected so far as not reasonable or necessary for protection. See *Perls* v. *Saalfeld*, *supra*. *Davies, Turner, & Co.* v. *Lowen*, W. N. 1890, p. 86, 64 L. T. 655. See generally, as to the divisibility of clauses in agreements in restraint of trade, *Baines* v. *Geary*, 35 Ch. D. 154; *Baker* v. *Hedgecock*, 39 Ch. D. 520; *Rogers* v. *Maddocks*, *supra*.

Consideration

P. 335, line 16.—After *Pilkington* v. *Scott*, add *Davies* v. *Davies*, 36 Ch. D. 359, at p. 381, C. A.

Goodwill.

P. 335, line 17.—See further as to the question of implied covenants on sale of goodwill not to trade, &c., *sub tit.* PARTNERSHIP, Vol. IV., p. 316, and *post*, p. 258.

Mutual protection in trade.

P. 335, *ad fin.*—After *Collins* v. *Locke*, add reference to *Mogul Steamship Co.* v. *McGregor Gow & Co.*, [1892] A. C. 25.

P. 336, line 8.—Where a Friendly Society was regulated by a code of rules, some of which were illegal as being in restraint of trade, it was held that such illegality did not vitiate the entire code, so as to prevent an action being brought by a member for payment of a sum due under other rules, it appearing that the general objects of the Society were legal. *Swaine* v. *Wilson*, 24 Q. B. D. 252, C. A.

Trade Unions.

P. 336, line 37.—As to the effects of sects. 3 & 4 of the stat. 34 & 35 Vict. c. 31, see *Strick* v. *Swansea Tin Plate Co.*, 36 Ch. D. 558.

Apprenticeship.

P. 336, line 40.—After *Capes* v. *Hutton*, add *De Francesco* v. *Barnum*, 45 Ch. D. 430. See *Brown* v. *Harper*, 68 L. T. 488.

P. 341, *ad fin.*—The reference to *tit.* PATENTS is to Vol. IV., pp. 598, *et seq.*

The reference to *tit.* LEASES is to Vol. III., pp. 202, *et seq.*

STAMPS.

P. 338, *ad fin.*—The Stamp Act, 1870, is repealed by the Stamp Act, 1891 (54 & 55 Vict. c. 39), but the same duties on bonds are re-enacted, with the addition of a duty in the case of a superannuation annuity of 6*d.* for every £5 or fractional part of £5 of the annuity. See *post, sub tit.* STAMPS.

PRECEDENTS AND NOTES THERETO.

PRECEDENT I.—PAYMENT OF MONEY AND INTEREST.

Priorty of creditor by specialty.

P. 346, note (*e*).—That a specialty creditor may still sue the heir or devisee of his debtor under the stat. 11 Geo. IV. and 1 Will. IV. c. 47, and obtain judgment against him personally to the extent of the assets which have come into his hands, see *Re Hedgeley, Small* v. *Hedgeley*, 34 Ch. D. 379. Notwithstanding the stat. 32 & 33 Vict. c. 46, it has been held that there is a distinction between specialty creditors and creditors by simple contract as regards the right of retainer by an executor, so that an executor who is only a simple contract creditor will not be allowed to exercise the right so as to defeat specialty as well as simple contract creditors: *Re Jones, Calver* v. *Laxton*, 31 Ch. D. 440. S. 10 of the Judicature Act, 1875 (38 & 39 Vict. c. 77), does not apply to judgment creditors: see *ibid.*, and see *Re Maggi, Winehouse* v. *Winehouse*, 20 Ch. D. 545; *Re M'Myn, Lightbown* v. *M'Myn*, 33 Ch. D. at p. 577; *Re Williams, Jones* v. *Williams*, 36 Ch. D. 573. In *Re Crowther, Ex parte Ellis*, 20 Q. B. D. 38, *Cave*, J., expressed his opinion that the Court in Bankruptcy must follow the practice of the Chancery Division with regard to the administration of the estates of deceased persons under

s. 125 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52). It may, however, be doubted whether the effect of s. 21 of the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), may not be to do away with all distinction as regards priority between creditors (other than "preferential" creditors), in the administration in bankruptcy of insolvent estates of deceased persons.

COMPOSITION.

I.—Private Arrangements.

Deeds of Arrangement Act, 1887.

Pp. 369 to 378.—An important alteration in the law affecting private deeds of arrangements with creditors has been effected by the Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), which provides for the registration of all such deeds within seven days after execution. A deed of arrangement is defined by s. 4 as follows:—

Definition of "deed of arrangement."

"(2.) A deed of arrangement to which this Act applies shall include any of the following instruments, whether under seal or not, made by, for, or in respect of the affairs of a debtor for the benefit of his creditors generally (otherwise than in pursuance of the law for the time being in force relating to bankruptcy) that is to say:—

"(*a.*) An assignment of property.

"(*b.*) A deed of or agreement for a composition. And in cases where creditors of a debtor obtain any control over his property or business.

"(*c.*) A deed of inspectorship entered into for the purpose of carrying on or winding up a business.

"(*d.*) A letter of licence authorizing the debtor or any other person to manage, carry on, realise or dispose of a business with a view to the payment of debts; and

"(*e.*) Any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorizing the debtor or any other person to manage, carry on, realise, or dispose of the debtor's business with a view to the payment of his debts."

It may be observed that this definition is very comprehen-

sive and would seem to include all the various kinds which are enumerated in Vol. II., at p. 376, and forms of which will be found in the precedents to the same volume.

The Act then goes on to provide for registration, and by s. 5 it is enacted as follows :—

Avoidance of unregistered deeds of arrangement.

"5. From and after the commencement of this Act [the 1st January, 1888] a deed of arrangement to which this Act applies shall be void unless the same shall have been registered under this Act within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of England or Ireland [the Act does not apply to Scotland, see sect. 2] respectively, then within seven clear days after the time at which it would, in the ordinary course of post, arrive in England or Ireland respectively, if posted within one week after the execution thereof, and unless the same shall bear such ordinary and *ad valorem* stamp as is under this Act provided."

It has been held that, although for other purposes such a deed, if unregistered, is void under this section, nevertheless it may, under s. 4 (1) (a) of the Bankruptcy Act, 1883, be a sufficient act of bankruptcy to form the foundation of a bankruptcy petition. *Re Hollingshead, Ex parte Heapy*, W. N. 1889, p. 28, 60 L. T. 273, 37 W. R. 415 ; see also s. 17 of the Deeds of Arrangement Act, 1887.

By s. 6 of the Act it is enacted as follows :—

Mode of registration.

Sect. 6. The registration of a deed of arrangement under this Act shall be effected in the following manner :

(1.) A true copy of the deed, and of every schedule or inventory thereto annexed, or therein referred to, shall be presented to and filed with the registrar within seven clear days after the execution of the said deed (in like manner as a bill of sale given by way of security for the payment of money is now required to be filed) together with an affidavit verifying the time of execution, and containing a description of the residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors :

(2.) No deed shall be registered under this Act unless the original of such deed, duly stamped with the proper inland revenue duty, and in addition to such duty a stamp denoting a duty computed at the rate of one shilling for every hundred pounds or fraction of a hundred pounds of the sworn value

of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed, is produced to the registrar at the time of such registration.

Affidavits.

By s. 14, affidavits are to be sworn before a master or before any person empowered to take affidavits.

Form of register.

Sect. 7 prescribes the form of register and the particulars to be entered therein by the registrar.

Registrar and office for registration.

Sect. 8. The registrar of bills of sale is to be the registrar for the purposes of this Act; and the Central Office of the Supreme Court of Judicature is to be the office for registration.

Rectification of register.

Power is given to the Court or a judge to extend the time for registration or rectify the register in the case of an omission to register, or a misstatement on the register in certain cases of accident or inadvertence: see s. 9.

Sect. 10. When the time for registering a deed of arrangement expires on a Sunday or any other day on which the registration office is closed, the registration shall be valid if made on the next following day on which the office is open.

Sect. 11 provides for the furnishing of office copies or extracts to persons requiring them.

Sect. 12 provides that any person may inspect the register or registered deeds on payment of the prescribed fee of one shilling for every deed inspected.

As to the local registration of copies of such deeds in England, see s. 13. These latter provisions are extended to Ireland by the Deeds of Arrangement Amendment Act, 1890 (53 & 54 Vict. c. 24).

Reference has already been made to the provisions in the Land Charges Registration & Searches Act, 1888 (51 & 52 Vict. c. 51), relating to the registration of deeds of arrangement which affect land: see ss. 7, 8 and 9, set out and considered, *ante*, p. 13.

These provisions are of course only supplemental to the principal Act, so that where a deed of arrangement affects "land" (which by s. 4 includes "lands, messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure," as to which definition see *ante*, pp. 10, 11), it must be registered under both Acts. A deed of arrangement may be valid although not executed by creditors until after regis-

tration under the Act: *Re Batten, Ex parte Milne*, 22 Q. B. D. 685, C. A.

Returns by bankruptcy officers.

An important provision affecting trustees of deeds of arrangement, and providing for the transmission of accounts to the Board of Trade, is contained in s. 25 of the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), which is as follows:—

Sect. 25 (1.) The general annual report which by section one hundred and thirty-one of the principal Act [the Bankruptcy Act, 1883], the Board of Trade is required to cause to be prepared and laid before Parliament shall include a report of proceedings under the Deeds of Arrangement Act, 1887.

(2.) For the purposes of such report—

(*a*) The registrar of bills of sale shall make such returns of the registration of deeds of arrangement, at such times and in such manner and form as may be prescribed;

(*b*) Every trustee under any deed of arrangement, as defined by section four of the Deeds of Arrangement Act, 1887, shall, within thirty days of the first day of January in each year, transmit to the Board of Trade, or as they direct, an account of his receipts and payments as such trustee, in the prescribed form, and verified in the prescribed manner. If any trustee fails to transmit such account, the judge of the High Court to whom bankruptcy business has been assigned may, for the purpose of enforcing the provisions of this section, exercise, on the application of the Board of Trade in the matter, all the powers conferred on the court by sub-section five of section one hundred and two of the principal Act in cases of bankruptcy.

The term "trustee" in this section shall include any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement.

(3.) The accounts transmitted to the Board of Trade in pursuance of this section shall be open to inspection by any creditor on payment of the prescribed fee.

General rules under the above section have since been framed (26 Nov. 1890) and may be cited as the Deeds of Arrangement Rules, 1890. Those which affect trustees of deeds of arrangement are rules 7 to 16 inclusive.

Transmission of accounts.

7. The account of receipts and payments to be transmitted to the Board of Trade by every trustee under any deed of arrangement as defined by s. 4 of the Deeds of Arrangement Act, 1887, shall be in the Form No. 2 in the Appendix, with such variations as circumstances may require, and shall be on sheets 13 inches by 16 inches, and shall be verified by an affidavit in the Form No. 3 in the Appendix, and shall be transmitted to "The Inspector-General in Bankruptcy, Board of Trade, Whitehall."

Receipts and payments.

8. In the account each receipt and payment must be entered in such a manner as sufficiently to explain its nature.

Trading account.

9. When the trustee carries on a business, a trading account must be forwarded as a distinct account, and the totals of receipts and payments on the trading account must alone be set out in the yearly account. The trading account shall be in the Form No. 4 in the Appendix, and shall be on sheets 13 inches by 16 inches.

Petty expenses.

10. Petty expenses must be entered in the accounts in sufficient detail to show that no estimated charges are made.

Realizations.

11. Where property has been realised the gross proceeds of sale must be entered under receipts in the account, and the necessary disbursements and charges incidental to sales must be entered as payments.

Dividends.

12. Where dividends or instalments of composition are distributed under the deed, the total amount of each dividend or instalment of composition must be entered in the trustee's account as one sum, and the trustee shall forward with his final account under the deed a statement in the Form No. 5 in the Appendix, showing the amount of the claim and the amount of dividend or composition payable to each creditor, distinguishing in such list the dividends or instalments of composition paid and those remaining unclaimed. Such list shall be on sheets 13 inches by 8 inches.

Partnership accounts.

13. Where the deed has been made by a firm of debtors in partnership, distinct accounts shall be transmitted of the joint estate and of each of the separate estates.

Imperfect accounts.

14. Where it appears to the Board of Trade that the account transmitted by a trustee under a deed of arrangement is incomplete, or requires amendment or explanation, the Board of Trade may require such account to be completed or amended, or require the trustee to furnish explanations with reference to any of the entries appearing therein; and any such requirement by the Board of Trade may be enforced in the same manner as the transmission of accounts under section 25 of the Bankruptcy Act, 1890.

Affidavit of no receipts or payments.

15. Where a trustee has not since the date of his becoming trustee, or since the last time that his accounts have been transmitted, as the case may be, received or paid any money on account of the debtor's estate, he shall, at the period when he is required to transmit his accounts to the Board of Trade, forward to the Board of Trade an affidavit of no receipts or payments.

Affidavit verifying final account.

16. When a trustee has realised all the property included in the deed of arrangement, or so much thereof as can probably be realised, and has distributed a final dividend or final instalment of composition, or in any other case where the trusts of the deed or obligations of the trustee have been completely fulfilled, the trustee shall transmit with his yearly account an affidavit in the

Form No. 6 in the Appendix, and no further accounts need thereafter be transmitted by him.

Assent to arrangement.

P. 372, line 14.—As to what constitutes a sufficient assent to a deed of arrangement, see *Exchange Bank of Yarmouth* v. *Blethen*, 10 App. Cas. 293; *Re Meredith, Meredith* v. *Facey*, 29 Ch. D. 745; *Adnitt* v. *Hands*, 57 L. T. 370; *Ex parte Michael, Re Michael*, 8 Mor. 305.

Preference of particular creditors.

P. 373, line 3.—After *Lane* v. *Husband*, add *Re Baber's Trusts*, L. R. 10 Eq. 554. A creditor who has executed a deed of arrangement does not remain bound, if other creditors before executing, obtain by a secret bargain an advantage over him. The essence of an arrangement between a debtor and his creditors is good faith. The consideration for which each creditor foregoes part of his debt, is, that the other creditors forego a similar part, and that all stand on an equal footing: *Ex parte Milner, Re Milner*, 15 Q. B. D. 605, C. A.; see also *Ex parte Phillips, Re Harvey*, W. N. 1888, p. 88, C. A., 36 W. R. 567.

But where a creditor had agreed with another creditor that a debt owing to the former should be postponed to an advance made to the debtor by the latter, and subsequently the debtor executed an assignment of his property for the benefit of his creditors generally, it was held that the preferred creditor was not as between himself and the postponing creditor deprived of the benefit of the agreement by coming in under the deed: *Berwick* v. *Matthews*, 66 L. T. 564, 40 W. R. 527.

"Property of debtor."

P. 375, line 11.—After *Ex parte Field*, add *Crawcour* v. *Salter*, 18 Ch. D. 30, 46, C. A.

II. Statutory Compositions.

Repeal of s. 18 of Act of 1883.

Pp. 378, *et seq.*—Sect. 18 of the Bankruptcy Act, 1883, has been repealed by the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71). But the repealed section has to a great extent been re-enacted by the same Act (see s. 3 of that Act, set out *post*, p. 87), so that no very important departure from the policy adopted by the Act of 1883 has been made, so far as relates to the subject-matter of the repealed section.

Bankruptcy Rules.

It may also be noticed that the Bankruptcy Rules, 1883, were annulled by the Bankruptcy Rules, 1886, many of which

latter rules have been varied by the Bankruptcy Rules, 1890. See Table of Rules, *post*, p. 102.

General law of bankruptcy not here discussed.

Pp. 383 to 399.—These pages treat at some length of the proceedings in bankruptcy, prior to the first meeting of creditors, when proposals for a composition or scheme are considered, and of the law relating to (1) acts of bankruptcy, (2) the bankruptcy petition, (3) the receiving order, (4) statement of affairs, and (5) public examination; all of which subjects are of more importance to the bankruptcy lawyer than to the conveyancer when considering the form of a statutory composition or scheme of arrangement, although necessary steps to obtaining a composition under the bankruptcy Acts. The reader is therefore referred for later decisions on these subjects to the numerous bankruptcy treatises. Legislative alterations will be noticed and some recent decisions which bear directly on the subject of statutory composition or schemes of arrangement.

Acts of bankruptcy.

P. 383, note (*c*). — A conveyance or assignment for the benefit of creditors generally is an act of bankruptcy although the instrument is void for non-compliance with the provisions of the Deeds of Arrangement Act, 1887: *Re Hollingshead, Ex parte Heapy*, W. N. 1889, p. 28, 60 L. T. 273, 37 W. R. 415.

P. 384, note (*d*).—The reference to *tit.* SETTLEMENTS in this note is to Vol. VI. pp. 176, *et seq.*

P. 385, note (*d*).—After *Lomax* v. *Buxton*, add *Ex parte Hauxwell, Re Hemingway*, 23 Ch. D. 626, C. A.

P. 388, line 1.—Sub-s. (*e*) of s. 4 (1), of the Bankruptcy Act, 1883, is repealed by the Bankruptcy Act, 1890. This sub-section is replaced by s. 1 of the later Act, the material part of which, so far as it affects the question of an act of bankruptcy by suffering execution, runs as follows:—

Execution levied.

1. A debtor commits an act of bankruptcy if execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days.

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the

date at which such summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days.

Meaning of "creditor who has obtained final judgment."

P. 388, line 8.—The question as to who is a "creditor who has obtained a final judgment," within the meaning of s. 4 (1) (*g*) of the Bankruptcy Act, 1883, has been the subject of judicial decision since *Ex parte Woodall, Re Woodall,* 13 Q. B. D. 479, C. A., cited at note (*n*): see *Ex parte Blanchett, Re Keeling,* 17 Q. B. D. 303, C. A.; *Re Goldring, Ex parte Harper,* 22 Q. B. D. 87, C. A. Since these decisions a legislative interpretation has been given by the Bankruptcy Act, 1890, in section 1, as follows:—

"Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of s. 4 of the principal Act [*i.e.*, the Bankruptcy Act, 1883, see the recital to the later Act]."

The effect of this provision would seem to be to enlarge the meaning of a "creditor" as interpreted by the Courts.

Notice of suspension of payment.

P. 390, note (*g*).—The sending round by a debtor to his creditors of a circular to the effect that their only alternatives were the acceptance of a composition or a suspension of payment by the debtor is an act of bankruptcy within s. 4, sub-s. 1 (*h*) of the Bankruptcy Act, 1883: *Ex parte Gibson, Re Lamb,* W. N. 1887, pp. 12, 20, C. A.

Application to rescind receiving order.

P. 396, line 4.—After a receiving order has been made, it will not be rescinded as a matter of course because the creditors are willing to arrange their claims out of Court: the Court will be guided in its discretion by considerations of the general benefit of the creditors and of public morality, and by the provisions of s. 35 of the Bankruptcy Act, 1883, as to annulment of adjudications: *Ex parte Dixon & Cardus, Re Dixon & Cardus,* W. N. 1888, p. 228, 37 W. R. 161, C. A.; *Ex parte Hester, Re Hester,* 22 Q. B. D. 632, C. A.

Effect of refusal to accept composition.

If the creditors refuse to accept the composition proposed by the debtor, the Court has no discretion to give the creditors any further opportunity of reconsidering their position except those mentioned in s. 20 of the Act of 1883, and cannot

refuse to adjudicate the debtor a bankrupt: *Re Pinfold, Ex parte Pinfold*, [1892] 1 Q. B. 73.

Public examination of debtor.

P. 399, line 1.—A slight modification appears to be made in sub-s. (8) of s. 17 of the Bankruptcy Act, 1883, by sub-s. (1) of s. 2 of the Bankruptcy Act, 1890, which is as follows:—

"Sect. 2 (1.) The notes taken of a debtor's public examination in pursuance of section seventeen of the principal Act shall be read over either to *or by* the debtor."

By sub-s. (2) of the same section the Court may dispense with the public examination of a lunatic or a person mentally unfit for the ordeal.

Contingent debt.

P. 402, note (*s*).—A surety's right of indemnity in respect of his liability is a contingent debt, and does not entitle the surety to vote: *Re Parrott, Ex parte Whittaker*, 63 L. T. 777, 39 W. R. 400, 8 Mor. 49.

Proxies.

Pp. 403, 404.—Rules 16 & 18 of Schedule 1 of the Bankruptcy Act, 1883, are repealed by the Bankruptcy Act, 1890; see s. 22 of the later Act, which introduces some material alterations respecting the giving of proxies.

P. 403, *ad fin.*—A proxy appointed under Sched. 1, 2, 15, of the Act of 1883, cannot attest his own signature: *Re Parrott, Ex parte Cullen*, [1891] 2 Q. B. 151.

Compositions and schemes of arrangement.

Pp. 405 to 415.—As has been already noticed, s. 18 of the Bankruptcy Act, 1883, has been repealed by the Bankruptcy Act, 1890. This section is now replaced by s. 3 of the later Act, which is as follows:—

Proposal by debtor.

Sect. 3 (1.) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors and setting out particulars of any sureties or securities proposed.

Resolution.

(2.) In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors

who have proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors.

Amendment of proposal.

(3.) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.

Assent to or dissent by creditor.

(4.) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

Approval by Court.

(5.) The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

Objections.

(6.) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the Court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

Report of official receiver.

(7.) The Court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

Court to refuse in certain cases.

(8.) If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required where the debtor is adjudged bankrupt to refuse his discharge, the Court shall refuse to approve the proposal.

Court shall refuse in certain cases.

(9.) If any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the Court shall refuse to approve the proposal, unless it provides reasonable security for payment of not less than seven shillings and sixpence in the pound on all the unsecured debts provable against the debtor's estate.

Discretion in other cases.

(10.) In any other case the Court may either approve or refuse to approve the proposal.

Testification of approval.

(11.) If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court.

Effect of approved composition.

(12.) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or

under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

Certificate.

(13.) A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall in the absence of fraud, be conclusive as to its validity.

Enforcement of composition.

(14.) The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

Annulment of composition.

(15.) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the official receiver or the trustee, or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

Application of s. 27 and Part V. of Principal Act to compositions.

(16.) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section twenty-seven and Part V. of the principal Act shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication," included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme.

Application of Part III. of Principal Act.

(17.) Part III. of the principal Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication," as in the last preceding sub-section.

Priorities.

(18.) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

Release.

(19.) The acceptance by a creditor of a composition or scheme shall not release any person who under the principal Act and this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

Meeting of creditors.

P. 405, notes (*d*) & (*e*).—It will be seen on reference to s. 3 of the Bankruptcy Act, 1890 (*ante*, p. 87), that the resolution of creditors accepting a composition may be passed at any meeting of creditors (not necessarily the first meeting) held before the public examination of the debtor is concluded.

No power for creditors to vary scheme proposed by debtor.

P. 406, note (*f*).—Creditors can only accept a composition or scheme in the form in which it is proposed by the debtor, and accordingly where the creditors added to the debtor's proposal a clause that the payment of the money shall be secured by a bond, and then accepted the proposal as so modified, it was held that the Court had no power to approve of the scheme: *Lucas* v. *Martin*, 37 Ch. D. 597, C. A.

Composition must be for benefit of creditors.

P. 410, note (*p*).—That the proposed composition must be for the benefit of creditors generally is still the law under the new Act. It will be observed that sub-ss. (8) and (9) of s. 3 of the Bankruptcy Act, 1890 (set out, *ante*, p. 88), reproduce with some important variations sub-s. (6) of s. 18 of the Bankruptcy Act, 1883, and especially by the later Act the Court would seem in great measure to be deprived of its power under the former Act to exercise any discretion in the matter, the words being "the Court shall refuse to approve," instead of "may in its discretion" refuse to approve the proposal for composition; but see per V. Williams, J., as to the use of the word "shall," *Re Pinfold, Ex parte Pinfold*, [1892] 1 Q. B. 73, at p. 75. Recent decisions, therefore, so far as they deal with the discretionary power given by the former section, would appear to have lost some of their force.

Court must form independent judgment.

In determining whether to approve or reject a scheme the Registrar and the Court are to exercise their judgment independently of the opinion of the majority of creditors; the Court will not readily set aside the order of a Registrar in such a matter: *Ex parte Reed, Re Reed*, 17 Q. B. D. 244, C. A. See *Ex parte Campbell, Re Wallace*, 15 Q. B. D. 213, C. A. *Ex parte Kearsley, Re Genese*, 18 Q. B. D. 168, C. A.; *Re Browne and Wingrove*, W. N. 1890, p. 131, C. A.

Scheme whether reasonable.

A scheme which provided for the appointment of a trustee with the like powers and duties as a trustee in bankruptcy, and purported to incorporate the provisions of s. 27 of the

Bankruptcy Act, 1883, was held neither reasonable nor calculated to benefit the general body of creditors: *Ex parte Bischoffsheim, Re Aylmer*, 19 Q. B. D. 33, C. A. But since this decision, s. 27 is now included in the powers of a trustee in a composition (see below, at p. 94); see also *Re Aylmer, Ex parte Bischoffsheim* (*No.* 2), 20 Q. B. D. 258, C. A.

Composition without security.

A scheme by which the solvent partner was to purchase the bankrupt partner's share at a valuation, the purchase-money to be paid by instalments extending over four years, no security being given (except a policy on the life of the solvent partner), was, under the circumstances, approved by Cave, J., *Re Staniar, Roberts & Co., Ex parte Smith*, 20 Q. B. D. 544. This decision to some extent qualifies the general proposition laid down at the end of this note, to the effect that absence of security is of itself sufficient reason for disapproval of a scheme.

Security for 7*s.* 6*d.* in the pound.

The Court has discretion whether it will approve or reject a scheme even though it provides reasonable security for payment of a composition of not less than 7*s.* 6*d.*, as required by the Act of 1890, s. 3, sub-s. 9: *Re Burr, Ex parte Board of Trade*, [1892] 2 Q. B. 467, C. A. Reasonable security means security for payment forthwith or within a short time: *Ex parte Paine, Re Paine*, W. N. 1891, p. 208, C. A.

Discharge of bankrupt.

P. 411, note (*q*).—Sect. 28 of the Bankruptcy Act, 1883, is repealed by the Bankruptcy Act, 1890. See now s. 8 of the later Act. Numerous decisions on the repealed section will be found in bankruptcy treatises. Many of these decisions are still applicable to the new section, but except so far as they bear directly on the subject of statutory compositions are not here cited. By the corresponding s. 8, sub-s. (2), of the Bankruptcy Act, 1890, it is, amongst other provisions, enacted as follows:—

> The Court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanour under the Debtors Act, 1869, or the principal Act [*i.e.*, the Bankruptcy Act, 1883], or any other misdemeanour connected with his bankruptcy or any felony connected with his bankruptcy, unless for special reasons the Court otherwise determines, and shall on proof of any of the facts hereinafter mentioned, either:—
>
> (i.) Refuse the discharge; or

(ii.) Suspend the discharge for the period of not less than two years; or

(iii.) Suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or

(iv.) Require the bankrupt as a condition of his discharge to consent to judgment entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts.

Provided that if at any time after the expiration of two years from the date of any order made under this section, the bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

(3.) The facts hereinbefore referred to are:—

(a.) That the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible:

(b.) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy:

(c.) That the bankrupt has continued to trade after knowing himself to be insolvent:

(d.) That the bankrupt has contracted any debt provable in the bankruptcy, without having at the time of contracting it, any reasonable or probable ground of expectation (proof whereof shall lie on him), of being able to pay it:

(e.) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities:

(f.) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs:

(g.) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him:

(h.) That the bankrupt has within three months preceding the date of the receiving order, incurred unjustifiable expense by bringing a frivolous or vexatious action:

(i.) That the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors:

(j.) That the bankrupt has within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities:

(k.) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors:

(l.) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4.) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver or the trustee shall be *primâ facie* evidence of the amount of such liabilities.

Effect of s. 8 of the Act of 1890.

Alterations (chiefly additions) of some importance, which are effected by this section, may be briefly noticed. The Court must refuse the discharge not only where a misdemeanour under the Bankruptcy Act, 1883, or Debtors Act, 1869, has been committed, but in the case of any other misdemeanour or any felony by the debtor connected with his bankruptcy. To entitle him to an unconditional discharge the bankrupt's assets must amount to fifty per cent. of his liabilities (*i.e.*, ten shillings in the pound), except in cases of misfortune. A satisfactory account must be given of any missing assets. His bankruptcy must not have been due to gambling, or a culpable neglect of his business affairs. He must not have wasted money by taking vexatious litigious proceedings, nor have incurred liabilities so as to reduce his assets to the statutory limit of ten shillings in the pound. Lastly, he must not have been previously bankrupt or made a composition or arrangement with his creditors. The word

"statutory" before composition had, however, already been repealed by the Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), s. 16.

Rash and hazardous speculations.

P. 411, note (*q*).—In addition to considering the question whether a composition or scheme is for the benefit of the creditors the Court should, before giving its approval, be satisfied, in the interests of commercial morality, with the debtor's conduct as a trader: *Ex parte McTear, Re McTear*, 59 L. T. 150. Where a debtor had incurred large debts by gambling and stock exchange transactions the Court refused to approve a composition on the ground that he had brought on his indebtedness by "rash and hazardous" speculations: *Ex parte Thornber, Re Barlow*, 56 L. T. 168 (affirmed by C. A., W. N. 1886, p. 207). See also *Ex parte Young, Re Young*, W. N. 1885, p. 12, C. A.; *Ex parte Jenkins, Re Jenkins*, 39 W. R. 430, 8 Morrell, 36.

It is important to note that it has been decided that s. 8 of the Bankruptcy Act, 1890, is not retrospective, at any rate to this extent, that an application for discharge by a debtor who was adjudicated bankrupt before the 1st January, 1891, must be made under s. 28 of the Bankruptcy Act, 1883: *Ex parte Raison, Re Raison*, 63 L. T. 709, 39 W. R. 271, 8 Mor. 11.

Application of s. 27 of the Act of 1883 to compositions.

P. 412, note (*q*).—It was held by the Court of Appeal, in *Ex parte Whinney, Re Grant*, 17 Q. B. D. 238, that s. 27 of the Bankruptcy Act, 1883, does not apply to a composition or scheme under s. 18. The ground of this decision was that the word "trustee" in s. 27 means trustee in bankruptcy, and does not include a trustee appointed in a composition. This somewhat narrow interpretation has since been remedied by the express enactment of the legislature, which has provided that where, under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, s. 27 is to apply as if the trustee were a trustee in bankruptcy. Bankruptcy Act, 1890, s. 3, sub-s. (16).

Effect of composition.

P. 412, note (*s*).—A composition is binding on all the creditors in respect of all debts and liabilities which would have been released by an order of discharge in bankruptcy:

Flint v. *Barnard*, 22 Q. B. D. 90, C. A. As to what assent of a creditor who has received his dividend under a composition will preclude him from bringing an action to recover the balance of his debt, on the ground that forbearance of his claim had been obtained by fraud, see *Thorp* v. *Dakin*, 52 L. T. 856. See s. 19 of the Bankruptcy Act, 1883.

Non-assenting creditor when bound.

P. 414, note (*y*).—Where the composition provided that the debtor's property should be handed back, a non-assenting execution creditor was held not bound: *Crew* v. *Terry*, 2 C. P. D. 403.

Annulment of composition discharges surety.

P. 415, note (*b*).—The annulment of a composition discharges a surety for the composition, and avoids any security given by him: *Walton* v. *Cook*, 40 Ch. D. 325. See further as to annulment of compositions, *Ex parte Moon, Re Moon*, 19 Q. B. D. 669, C. A.; *Re Stephenson, Ex parte Official Receiver*, 20 Q. B. D. 540.

III. Administration of Debtor's Estate.

Alterations in sub-ss. (12) and (13) of sect. 18.

Pp. 416 to 465.—Sub-ss. (12) and (13) of s. 18 of the Bankruptcy Act, 1883, are now replaced by sub-ss. (16) and (17) of s. 3 of the Bankruptcy Act, 1890, which are set out *ante*, p. 89. It will be observed that in sub-s. (16) of s. 3 of the later Act an addition is made, and Part V. is to apply if a trustee is appointed "to distribute the composition." By the same sub-s., s. 27 of the Act of 1883 (see Vol. II., p. 412, note (*q*), and *ante*, p. 94), is made expressly to apply in such a case. The language of sub-s. (17) of s. 3 of the later Act is identical with that of sub-s. (13) of s. 18 of the earlier Act.

Remuneration of trustees.

P. 417, line 17.—Sub-s. (4) of s. 72 of the Bankruptcy Act, 1883, is repealed by the Bankruptcy Act, 1890, and by the same Act, sub-s. (1) of the same s. 72, is modified. With regard to the remuneration of trustees, it is provided by s. 15 of the later Act, as follows:—

Sect. 15 (1.) The part of the trustee's remuneration to be payable in pursuance of section seventy-two of the principal Act on the amount realized shall be payable only on the amount realized by the trustee.

(2.) Where a trustee acts without remuneration he shall be allowed out of the bankrupt's estate such proper expenses incurred

by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Board of Trade, approve.

The limitation as to costs imposed by r. 112 of 1886 does not apply to conveyancing business: *Re Parfit*, 23 Q. B. D. 40.

P. 419, line 2.—It is provided by s. 15 of the Bankruptcy Act, 1890, as follows:—

Allowance of costs.

"Sect. 15 (3.) The sanction required under sect. 73 of the principal Act for the employment of solicitors and other persons must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shewn that no undue delay took place in obtaining the sanction."

P. 423, line 1.—Sect. 79 of the Bankruptcy Act, 1883, would seem to be superseded by s. 16 of the Bankruptcy Act, 1890, and supplemented by s. 17 of the later Act. By these two sections it is enacted as follows:—

Trustee to furnish list of creditors.

"Sect. 16. The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors. The trustee or official receiver shall be entitled to charge for such list the sum of threepence per folio of seventy-two words, together with the cost of the postage thereof.

Statement of accounts.

"Sect. 17. It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts. Provided the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, such sum to be repaid to him out of the estate if the creditors or the Court so direct."

Removal of trustees by Board of Trade.

P. 426, line 7.—Increased powers are given to the Board of Trade for the removal of trustees by s. 19 of the Bankruptcy Act, 1890, which provides as follows:—

"Sect. 19. The power of the Board of Trade to remove a trustee under section eighty-six of the principal Act shall extend to any case in which the board are of opinion that the trustee is, by reason of lunacy, or continued sickness, or absence, incapable

of performing his duties, or that his connection with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally, or where in any other matter he has been removed from office on the ground of misconduct."

With reference to the effect of the removal of a trustee, s. 4 of the Bankruptcy Act, 1890, enacts as follows :—

"Sect. 4. A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty." Disqualification of removed trustee.

P. 429, note (*h*).—After *Ex parte Merriman, Re Stenson,* add *Ex parte Off. Rec., Re Reed,* 19 Q. B. D. 174, C. A. Appeal against trustee.

P. 429, note (*i*).—Sect. 25 of the Bankruptcy Act, 1890, extends the powers given by s. 102, sub-s. (5) of the Act of 1883 to defaults by trustees of deeds of arrangement under the Deeds of Arrangement Act, 1887 (see *ante,* p. 82). General powers of Bankruptcy Court.

P. 431, note (*m*).—In *Ex parte Crosbie, Re Bedell,* the words "particular adjudication under which the proof was tendered" used by *James,* L. J., appear to have meant "adjudication at the particular time when the adjudication was in fact made; and not the particular adjudication in the sense of an adjudication of the creditor who actually did get the adjudication": per *Cotton,* L. J., in *Hood* v. *Newby,* 21 Ch. D. 605, at p. 612, C. A. Available act of bankruptcy.

P. 431, note (*j*).—It would seem from *Hardy* v. *Fothergill,* 13 App. Cas. 351, that every kind of debt or liability which is capable of being fairly estimated in money or money's worth is a debt proveable in bankruptcy. Proveable debt.

P. 432, note (*p*).—If a trustee has himself a beneficial interest in a debt due to the trust estate he may prove such debt in bankruptcy without joining other persons beneficially interested: *Re Gamgee, Ex parte Ward,* W. N. 1891, p. 106, 64 L. T. 730, 39 W. R. 579, 8 Mor. 182, C. A. Proof by trustees.

P. 433, note (*p*).—After *Ex parte Melbourn,* add *Re Kloebe, Kannreuther* v. *Geiselbrecht,* 28 Ch. D. 175. Foreigners.

P. 434, note (*r*).—As to proof in bankruptcy in respect of annuities see Vol. I., pp. 676, *et seq.,* and *ante,* p. 47. Annuity.

Set-off.

P. 435, note (*t*).—See generally as to set-off in bankruptcy, Williams' Bkcy. Pr. (5th Ed. 1891) pp. 119 *et seq.*

Ecclesiastical Dilapidations.

The Incumbent's Resignation Act, 1871 (34 & 35 Vict. c. 44), is amended by the stat. 50 & 51 Vict. c. 23, which allows set-off in respect of any sum due under the Ecclesiastical Dilapidations Act, 1871 (34 & 35 Vict. c. 43).

Double proof.

P. 439, note (*b*).—Where a trustee handed trust money for investment to a firm in which he was a partner, and the trust money was misappropriated by the firm who subsequently became bankrupt, it was held that the other trustees could prove for the amount against the separate estate of the bankrupt trustee as well as against the joint estate of the firm: *Re Parkers, Ex parte Sheppard*, 19 Q. B. D. 84. See further as to double proof, Williams' Bkcy. Pr. (5th Ed. 1891) pp. 340, *et seq.*

Interest.

P. 440, line 7.—By s. 23 of the Bankruptcy Act, 1890, it is enacted as follows:—

> Sect. 23. "Where a debt has been proved upon a debtor's estate under the principal Act, and such debt includes interest or any pecuniary consideration in lieu of interest, such interest, or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding 5 per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full."

Debt payable at a future time.

As to proof for interest on an interest-bearing debt payable at a future time, see *Re Browne and Wingrove, Ex parte Ador*, [1891] 2 Q. B. 574, C. A.

Interest on future debt.

P. 440, note (*d*).—*Duncombe* v. *Brighton Club* was disapproved of by the Court of Appeal in *London, Chatham & Dover Rail. Co.* v. *South Eastern Rail. Co.* [1892] 1 Ch. 120, (affirmed by H. L. W. N. 1893, p. 132), where it was held that interest cannot be allowed on a debt payable *in futuro* unless either a term certain is fixed by agreement for payment, or a demand for payment with interest has been made within 3 & 4 Will. IV., c. 42, s. 28.

Preferential debts.

P. 442, note (*k*).—Sect. 40, sub-s. (1) (c), of the Bankruptcy Act, 1883, was amended by the Bankruptcy (Agricultural Labourers' Wages) Act, 1886 (49 & 50 Vict. c. 28), so far as relates to agricultural labourers' wages, but by the Preferential Payments in Bankruptcy Act, 1888 (51 & 52

Vict. c. 62), the Act of 1886 was repealed, as also sub-ss. (1) and (2) of s. 40 of the Act of 1883, but the last-mentioned provisions were re-enacted except as regards clause (c) of sub-s. (1). By clause (c) of sub-s. (1) of the Act of 1888, it is enacted as follows :—

"(c.) All wages of any labourer or workman not exceeding *twenty-five* pounds, whether payable for time or for piecework, in respect of services rendered to the bankrupt or the company during *two* months before the date of the receiving order or, as the case may be, the commencement of the winding-up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding-up."

Preferential debts.

Sect. 1 of the Act of 1888 also provides for the immediate discharge of preferential debts (sub-s. 3); and for giving to preferential debts a first charge on goods distrained (or the proceeds of sale thereof), within three months of the date of the receiving order (sub-s. 4). This section is to have effect as part of s. 40 of the Act of 1883 (sub-s. 5).

Sect. 3 provides that the Act shall only apply in the case of receiving orders made after the commencement of the Act, (*i.e.* 1st January, 1889).

Power to landlord to distrain for rent.

P. 444, line 29.—Sect. 42 of the Bankruptcy Act, 1883, is to be read as if the words "six months' rent" were substituted for the words "one year's rent" (s. 28 of the Bankruptcy Act, 1890). The rights of distress are further limited by s. 1, sub-s. (4) of the Preferential Payments in Bankruptcy Act, 1888, *supra*.

Commencement of composition.

P. 447, line 7.—The commencement of a composition or scheme is at the date of its sanction by the creditors, and the approval of such composition or scheme by the Court is equivalent to a discharge within the meaning of paragraph (1) of sub-s. (2) of s. 44 of the Bankruptcy Act, 1883: *Re Croom, England* v. *Provincial Assets Company*, [1891] 1 Ch. 695; see also *Ex parte Clark, Re Clark*, 13 Q. B. D. 426, C. A. See *post*, p. 111.

Reputed ownership.

P. 448, note (*a*).—After *Ex parte Watkins, Re Causton*,

add *Colonial Bank* v. *Whinney*, 11 App. Cas. 426 at 436; *Re Lock, Ex parte Poppleton* (No. 3), 63 L. T. 839, 39 W. R. 384, 8 Mor. 51. See also *Re Webber, Ex parte Slater*, 64 L. T. 426. See further on reputed ownership, Williams' Bkcy. Pr. (5th Ed. 1891), pp. 182—199.

Duties of sheriff as to goods taken in execution.

P. 450, line 5.—Sub-ss. (1) & (2) of s. 46 of the Bankruptcy Act, 1883, are repealed by the Bankruptcy Act, 1890, but are virtually re-enacted by s. 11 of the later Act, with certain important alterations. The provisions of sub-s. (1) of s. 46, are extended so as to apply if the sheriff is served with notice of a receiving order not only before sale, but also "before the completion of the execution by the receipt or recovery of the full amount of the levy," and so that any money seized or received by him is to be delivered to the official receiver. And the provisions of sub-s. (2) are to apply, not only in case of sale, but also where money is paid to avoid sale, and are to apply on the making of a receiving order instead of, as formerly, on adjudication.

Voluntary settlements.

P. 451, note (*c*).—The reference to *tit.* SETTLEMENTS, is to Vol. VI. at pp. 176 *et seq.*, where the subject of voluntary settlements is fully discussed. See also *post*, p. 312.

Fraudulent preference.

P. 453, note (*d*).—If the real or dominant motive is not to prefer, the fact that the creditor is preferred is immaterial: *Ex parte Taylor, Re Goldsmid*, 18 Q. B. D. 295, C. A.; *Re Mills, Ex parte Official Receiver*, W. N. 1888, p. 24, 58 L. T. 871, C. A. See further as to fraudulent preference, Williams' Bkcy. Pr. (5th Ed. 1891), pp. 209 *et seq.*

P. 458, note (*r*).—The reference to tit. SETTLEMENTS is to Vol. VI. p. 536.

P. 458, note (*s*).—By s. 5 of the Bankruptcy Act, 1890, it is enacted as follows:—

Committee of inspection.

Sect. 5. "Subsection one of section twenty-two of the principal Act (relating to the committee of inspection) shall be read and construed as if the words 'from among the creditors' were substituted for the words 'from among the creditors qualified to vote.' Provided that a creditor who is appointed a member of a committee of inspection shall not be qualified to act until he has proved his debt and the proof has been admitted."

P. 465, line 8.—For the repealed sub-s. (15) of s. 18 of the

Bankruptcy Act, 1883, is substituted sub-s. (19) of s. 3 of the Bankruptcy Act, 1890, which is substantially identical, except that the more stringent provisions relating to discharge in the later Act (s. 8), are there referred to, and must be borne in mind.

Effect of compositions, &c., as regards third parties.

IV. Compositions and Schemes after Adjudication.

P. 466, line 14.—The words "by special resolution" in sub-s. (1) of s. 23 of the Bankruptcy Act, 1883, are expunged by the Bankruptcy Act, 1890. The necessary resolution is to be one passed by a majority in number and three-fourths in value of the number who proved; see s. 6, and sub-s. (2) of s. 3, of the Act of 1890. These somewhat elaborate provisions appear to leave the law on this point exactly as it would have been if the words "special resolution" had been left unaltered: see the definition of "special resolution," in s. 148 of the Bankruptcy Act, 1883.

Resolution by creditors for composition.

P. 466, note (*i*).—The Court has the same powers of enforcing payment under s. 23, as in the case of a composition or scheme before adjudication: *Re Lazarus, Ex parte Godfrey*, 18 Q. B. D. 670, C. A.

Power of Court to enforce payment.

V. Stamps.

P. 467, *ad fin.*— Under the Deeds of Arrangement Act, 1887, as has already been noticed (*ante*, p. 80), deeds of arrangement within the meaning of that Act, must, in addition to the proper inland revenue stamp, be stamped at a rate of one shilling for every hundred pounds or fraction of a hundred pounds of the sworn value of the property passing or where no property passes under the deed the amount of composition payable under the deed (s. 6, sub-s. (2)).

Deeds of Arrangement Act, 1887.

See Order of 18th December, 1890, as to fees and percentages chargeable in bankruptcy proceedings (including compositions and schemes) and as to payment thereof by means of stamps.

Fees and percentages.

Bankruptcy Rules relating to Compositions, &c.

The following Table is intended to indicate the Rules of 1886 and 1890, which have been substituted for annulled Rules of 1883, cited or referred to in the Dissertation on Compositions contained in Vol. II. The Rules of 1890 are distinguished by asterisks.

Table of Rules.

Subject-matter.	Page of Vol. II. where matter referred to.	Number of repealed rule of 1883.	Number of corresponding rule of 1886 or 1890.
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Filing and deposit of proxy	404, note (*a*).	183 (2)	245 (3)*
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Evidence and order	408, note.	161	204*
Correction of errors	412, note (*r*).	162	207*
Proceedings if scheme approved	,, ,,	163	208*
Motions	414, note (*z*).	19	27
Non-payment of composition	,, ,,	164	211*
Dividends	,, ,,	167	214*
Vesting of property on annulment	415, note (*b*).	165	212*
Annulment of composition	,, ,,	166	213*
Remuneration of trustee	417, note (*e*).	224	305
No lien on debtor's books	418, note (*h*).	259	349

Subject-matter.	Page of Vol. II. where matter referred to.	Number of repealed rule of 1883.	Number of corresponding rule of 1886 or 1890.
Costs	418, note (*i*).	102, 103	111, 112, 112*a**
Account at local bank	419, note (*i*).	228	312
Payment into bank	420, note (*i*).	251	340
Payments out of bank	420, note (*l*).	252	341
Audit of accounts	421, note (*m*).	211	289
Copy accounts to be filed	422, note (*o*).	212	290
Creditor may obtain copies	,, ,,	230	314
Affidavit of no receipts	,, ,,	213	291
Annual returns	,, ,,	217	None
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Accounts and audit	423, note (*q*).	207 to 210	285 to 288
Trustee carrying on business	,, ,,	225	308
Application for release	424, note (*r*).	226	309
Security to Board of Trade	426, note (*x*).	253	342
Objections to appointment of trustee	426, note (*y*).	220	299
Removal of trustee	427, note (*b*).	227	311
Resignation of trustee	427, note (*c*).	223	304
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Time for lodging proofs	436, note (*u*).	170	222
Form of proof	436, note (*x*).	169	219, 219*a**
Time for admission or rejection of proof	440, note (*e*).	173	227, 227*a**
Appeals	441, note (*f*).	174	230
Proofs of debts	441, note (*h*).	171, 172	223, 225, 225*a**
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Notice of intended dividend	461, note (*b*).	175	232
Production of bills, &c.	462, note (*b*).	176	233
Dividends may be sent by post	,, ,,	177	234
Payments out of Bank of England	464, note (*e*).	255	341

Selected Forms.

The forms selected from the appendix to the Bankruptcy Rules, 1883, and given in the appendix to the Dissertation on Composition, are now no longer in force. By the Bankruptcy Rules, 1886, rule 2, "The Bankruptcy Rules, 1883, and all other subsequent rules, heretofore made under the Act, are hereby annulled." And by s. 168, sub-s. (1), of the Bankruptcy Act, 1883, "general rules" include forms. The

appendix to the Bankruptcy Rules, 1886, contains forms which to a great extent correspond with the similar forms appended to the Bankruptcy Rules, 1883, but the forms of 1886 have been further altered by the Bankruptcy Rules, 1890, especially as regards statutory compositions or schemes of arrangement. The appendix to the Bankruptcy Rules, 1890, is prefaced by the following note—

"The forms in this appendix and the forms in the appendix to the Bankruptcy Rules, 1886, are to be used as one set of forms. The number at the head of each form in this appendix is the number by which the form may be cited and referred to in conjunction with the forms in the appendix to the Bankruptcy Rules, 1886. Where in this appendix a new form is substituted for one of the existing forms in the appendix to the Bankruptcy Rules, 1886, the number given to the new form for citation is the same as the number of the form which it replaces."

Rule 4, paragraph (1), of the Bankruptcy Rules, 1883 (cited in Vol. II., at p. 468, note (*m*)), is replaced in identical terms by rule 5, paragraph (1), of the Bankruptcy Rules, 1886.

Instead of setting out the new forms in full, it has been thought sufficient to give the following list of the numbers and titles of the forms appended to the Bankruptcy Rules, 1886 & 1890, which correspond with the forms already selected from the appendix to the Bankruptcy Rules, 1883. It must not, however, be assumed that the new forms, although identical in title, are therefore identical in contents, and, where required, reference should be made to the form itself, which, being an official form, is readily obtainable elsewhere.

Selected forms from the Bankruptcy Rules, 1883.	Corresponding forms since substituted by the Bankruptcy Rules 1886 and 1890.	
1. General Title (High Court).	1886.	1. General Title (High Court).
2. General Title (County Court).	1886.	2. General Title (County Court).
3. Declaration of inability to pay.	1886.	3. Declaration of inability to pay.
4. Debtor's petition.	1886.	4. Debtor's petition.
10. Creditor's petition.	1886.	10. Creditor's petition.
12. Affidavit of truth of statements in petition.	1886.	12. Affidavit of truth of statements in petition.

Selected forms from the Bankruptcy Rules, 1883.		Corresponding forms since substituted by the Bankruptcy Rules 1886 and 1890.
13. Affidavit of truth of statements in petition (general deponents).	1886.	13. Affidavit of truth of statements in joint petition.
47. Order sanctioning composition or scheme.	1890.	67. Order on application to approve composition.
48. Application to enforce provision in composition.	1890.	68. Application for enforcement of provision in a composition.
49. Affidavit in support of application.	1890.	69. Affidavit in support of application for enforcement, etc.
50. Order for enforcement.	1890.	70. Order for enforcement, etc.
51. Certificate of composition or scheme.	1890.	71. Certificate of approval of composition or scheme.
52. Affidavit of proof.	1886.	72. Proof of debt. General form.
53. Affidavit of proof by agent of company.		
54. General proxy.	1890.	75. General proxy.
55. Special proxy.	1890.	76. Special proxy.
56. Voting letter under s. 18.	1886.	77. Voting letter under sect. 18 (2).
57. Notice to creditors of first meeting.	1890.	78. Notice to creditors of first meeting where no order for summary administration has been made and the debtor has not submitted a proposal for a composition or scheme.
58. Notice to debtor to attend first meeting.	1886.	85. Notice to debtor to attend first meeting of creditors.
59. Minutes of proceedings at first meeting.	1890.	88. Resolution accepting composition.
60. List of creditors to be used at every meeting.	1890.	93. List of creditors assembled to be used at every meeting (except a second meeting where scheme or composition has been entertained).
61. Order of Court for meeting.	1886.	100. Order of Court for general meeting of creditors.
62. Notice of meeting (general form).	1890.	101. Notice of meeting (general form).
63. Notice convening second meeting to confirm composition or scheme.	1886.	103. Notice to creditors convening second meeting to confirm composition or scheme.
64. Resolution at second meeting.	1886.	104. Resolution at second general meeting.
65. Notice to creditors and official receiver of application to Court to sanction composition.	1890.	105. Notice to official receiver of application to Court by debtor to sanction composition or scheme.
66. Notice to creditors of meeting to name trustee.	1886.	107. Notice to creditors of meeting to remove trustee and to appoint a person to fill the vacancy.

Selected forms from the Bankruptcy Rules, 1883.	Corresponding forms since substituted by the Bankruptcy Rules, 1886 and 1890.	
67. Notice of meeting to be held to appoint new trustee.	1886.	108. Notice of meeting to be held to appoint new trustee.
68. Minutes of meeting for receiving trustee's resignation.	1886.	109. Minutes of meeting for receiving resignation of trustee, etc.
69. Report of appointment of trustee.	1886.	110. Report to Board of Trade of appointment of trustee in bankruptcy.
70. Request by creditor to Board to notify objection to trustee to High Court.	1886.	114. Request by creditors to Board of Trade to notify objection to trustee to High Court.
71. Certificate of appointment of trustee.	1886.	115. Certificate of appointment of trustee.
72. Bond of trustee.		
73. Report of appointment of trustee to fill vacancy.	1886.	116. Report of appointment of trustee to fill a vacancy caused by resignation, etc.
74. Application by trustee to Court for directions.	1886.	117. Application for directions by trustee.
75. Order on application for directions.	1886.	118. Order on application of trustees for directions.
77. Notice of intention to declare dividend.	1886.	123. Notice to creditors of intention to declare dividend.
78. Notice of intention to declare final dividend.	1886.	124. Notice to persons claiming to be creditors of intention to declare final dividend.
79. Statement to accompany notice of dividend.	1890.	122. Statement to accompany notice of dividend.
80. Notice of dividend.	1886.	126. Notice of dividend.
82. Certificate by committee of inspection as to credit of trustee's accounts.	1886.	128. Certificate by committee of inspection as to audit of trustee's accounts.
83. Affidavit verifying trustee's accounts.	1886.	129. Affidavit verifying trustee's accounts.
84. Annual return by trustee.		
85. Trustee's trading account.	1886.	130. Trustee's trading account.
86. Profit and loss account.	1886.	131. Profit and loss account (trading account).
87. Affidavit verifying trading account.	1886.	132. Affidavit verifying trustee's trading account.
91. Application to Board for account at local bank.	1886.	136. Application to Board of Trade to authorize account at local bank.
92. Order of Board for local account.	1886.	137. Order of Board for local account.
93. Notice to creditors of intention to apply for release.	1886.	138. Notice to creditors of intention to apply for release.
94. Application for release to Board of Trade.	1886.	139. Application by trustee to Board of Trade for release.

In addition to the list of forms above given which correspond with those selected from the Appendix of Forms to the Bankruptcy Rules, 1883, are forms appended to the Bankruptcy Rules, 1886 and 1890, to which there are no corresponding forms in the Bankruptcy Rules, 1883. A list of these supplemental forms has been selected and will be found below. It has not been thought necessary, for the reason above stated, to set out the forms in full.

LIST OF SELECTED SUPPLEMENTAL FORMS.

Bankruptcy Rules.	No.	Title of Form.
1890.	73.	Proof of debt of workman.
1890.	80.	Notice to creditors of first meeting in summary case where debtor has not submitted an offer of composition.
1890.	80A.	Notice of first or other meeting where debtor submits an offer of composition or scheme (where no order for summary administration has been made).
1890.	81.	Notice of meeting in a summary case where debtor submits an offer of composition or scheme.
1890.	81A.	Proposal for a composition.
1890.	81B.	Proposal for a scheme.
1890.	82.	Report of official receiver to creditors on proposal for composition or scheme and voting letter.
1890.	89.	Resolution accepting a scheme of arrangement
1886.	90.	Memorandum of proceedings at first meeting in summary cases.
1886.	91.	Memorandum of adjournment of first or other meeting.
1886.	92.	Memorandum of proceedings at adjourned first meeting (no quorum).
1890.	94.	List of creditors for use at meeting held for consideration of composition or scheme.
1890.	95.	Application to extend time for accepting or approving a composition or scheme and order thereon.
1890.	96.	Application to Court to appoint day for approving composition or scheme.
1886.	97.	Application to Court to appoint day for approving composition or scheme in a summary case.
1890.	98.	Notice to creditors of application to Court to approve composition or scheme of arrangement.
1886.	99.	Notice to creditors of application to Court to approve composition or scheme of arrangement in a summary case.

Bankruptcy Rules.	No.	Title of Form.
1886.	111.	Report to Board of Trade of appointment of trustee under a scheme.
1886.	112.	Report to Board of Trade of appointment of trustee in a composition.
1886.	113.	Report to Board of Trade of non-appointment of trustee.
1890.	122A.	Certified list of proofs filed under Rule 225, Bankruptcy Rules, 1886, and application for issue of cheques for dividend on bankruptcy estates account.
1890.	122B.	Certified list of proofs filed under rule 225, Bankruptcy Rules, 1886, local bank case.
1886.	125.	Notice to creditor of intention to pay composition.

PRECEDENTS.

Precedent I.—Conveyance for Benefit of Creditors.

Registration of deeds of arrangement.

P. 490, note (*a*).—This note must now be read with reference to s. 3 of the Bankruptcy Act, 1890 (set out *ante*, p. 87) and to the Deeds of Arrangement Act, 1887, whereby every deed of arrangement within the meaning of that Act must now be registered (see *ante*, p. 80).

Deed of arrangement how far revocable.

P. 490, note (*b*).—After *Acton* v. *Woodgate*, add *Godfrey* v. *Poole*, 13 App. Cas. 497, where numerous cases on this point were cited.

Recitals.

P. 491, note (*c*).—As to the effect of recitals in limiting the operation of a composition deed, see *Ex parte Dawes, Re Moon*, 17 Q. B. D. 275, C. A.

Assignment of pay, &c.

P. 492, note (*d*).—As to the assignability of pay and pensions, &c., see *Lucas* v. *Harris*, 18 Q. B. D. 127, C. A.; *Apthorpe* v. *Apthorpe*, 12 P. D. 192, C. A.; *Crowe* v. *Price*, 22 Q. B. D. 429, C. A.; *Blake* v. *Halse*, W. N. 1892, p. 143.

Exception of leaseholds.

P. 492, note (*e*).—If the debtor is possessed of leaseholds, they will generally be excepted, as in the following Precedent (see Vol. II., p. 496).

P. 494, note (*g*).—After *Ex parte Vaughan, Re Riddeough*,

add *Re Forster, Rawlings* v. *Forster*, 58 L. T. 114, 36 W. R. 144. In this case a trustee of a deed of arrangement, which, being an act of bankruptcy, formed the basis of a bankruptcy petition, was compelled to refund to the trustee in bankruptcy a sum of money which he had in good faith paid to his solicitor for costs incurred in connection with the deed.

Payments by trustee of composition.

The great risk which a trustee runs if he pays away any of the money of the debtor during the period of three months from the date of the deed suggests the advisability of inserting a clause indemnifying him in respect of any payments made within such period.

The following clause may therefore usefully be added at the end of clause 4 of this Precedent.

"Provided that in case the trustee shall at any time during the period of three calendar months from the date of these presents be required to make any payment of any moneys arising out of the sale and conversion of the trust premises, and shall in good faith make any such payment, then the several persons, companies, and firms whose names and seals shall for the time being be subscribed in and affixed to the schedule hereunder written or who shall have otherwise acceded to these presents will hold and keep the trustee indemnified in respect of every such payment."

Proviso for indemnifying trustee in respect of payments.

Or the trustee may obtain a special indemnity on the occasion of any particular payment which he is called upon to make.

The provision in the last line of clause 4 of this Precedent "to pay the surplus (if any) to the debtor," is important as appears from the recent case of *Smith* v. *Cooke*, *Storey* v. *Cooke*, [1891] A. C. 297, in which it was held that in the absence of some such words no resulting trust can be implied and the creditors will be beneficially entitled to the surplus.

In order that a deed of arrangement for the benefit of creditors may constitute an act of bankruptcy within the meaning of s. 4, sub-s. (1) (a) of the Bankruptcy Act, 1883, there must be a legal "conveyance" or "assignment" of property. Other modes of disposition, such as a declaration of trust or a mere agreement, does not have this effect: *Re Spackman, Ex parte Foley*, 24 Q. B. D. 728, C. A. But a deed assigning all property except leaseholds (of which the debtor declares a trust), is not less an act of bankruptcy

Deed of arrangement, when an act of bankruptcy.

because the leaseholds constitute a large proportion of the debtor's property: *Ex parte Hughes, Re Hughes*, [1893] 1 Q. B. 595, C. A.

Corrigendum. P. 495, line 33.—For "Common Law Procedure Act, 1854," read "Arbitration Act, 1889."

PRECEDENT II.—ASSIGNMENT OF PERSONALTY, &c.

Release of debtor. P. 501, note (*b*).—After *Price* v. *Barker*, add *Bateson* v. *Gosling*, L. R. 7 C. P. 9; *Duck* v. *Mayeu*, [1892] 2 Q. B. 511, C. A.

PRECEDENT VII.—AGREEMENT FOR COMPOSITION BY PARTNERS.

Accord and satisfaction. P. 520, note (*f*).—*Beer* v. *Foakes* was affirmed on appeal, *sub nom. Foakes* v. *Beer*, 9 App. Cas. 605. See further as to accord and satisfaction, *Day* v. *McLea*, 22 Q. B. D. 610, C. A.

P. 522, note (*g*).—After *Ex parte Peacock, Re Duffield*, add *Newell* v. *Van Praagh*, L. R. 9 C. P. 96.

PRECEDENT VIII.—COMPOSITION DEED.

Erratum. P. 525, note (*a*).—For L. R. 5 C. P. 607, read L. R. 6 C. P. 180; and add *Hall* v. *Levy*, L. R. 10 C. P. 154.

PRECEDENTS XV., XX.—STATUTORY COMPOSITIONS, &c.

Modification of precedents. Pp. 550 to 581.—Modifications of these Precedents are here suggested so as to bring them into accordance with the present law.

Corrigenda. P. 550, *ad fin.*—For "s. 18 of the Bankruptcy Act, 1883," read "s. 3 of the Bankruptcy Act, 1890." For "at the first meeting," read "at a meeting duly held at the date above-mentioned."

P. 551, note (*a*).—Sect. 28 of the Bankruptcy Act, 1883, is now replaced by s. 8 of the Bankruptcy Act, 1890 (see *ante*, p. 91).

Fees and percentages. P. 551, note (*b*).—If no deed is contemplated, care must be taken to see that the resolutions provide for the payment

"of all proper costs, charges, and expenses of and incidental to the proceedings, and all fees and percentages payable to the official receiver and the Board of Trade under the scale of fees and percentages in force for the time being" (r. 27 of 1890, cited as r. 205). See also Vol. II. pp. 552—556, Prec. XVI., and the alterations therein, *infra*.

Corrigenda.

P. 552, line 3.—For "s. 18 of the Bankruptcy Act, 1883," read "s. 3 of the Bankruptcy Act, 1890."

P. 552, line 14.—For "the first meeting," read "a meeting."

P. 552, *ad fin.*—Omit recital of confirmation of resolution.

P. 553, line 13.—For "Bankruptcy Act, 1883," read "Bankruptcy Acts, 1883—1890."

P. 553, line 15.—After "into effect," add: "and also all fees and percentages payable to the official receiver and the Board of Trade under the scale of fees and percentages now in force" (see r. 27 of 1890, cited as r. 205).

P. 553, line 27.—For "by the Act aforesaid," read "by the Acts aforesaid, and by the Preferential Payments in Bankruptcy Act, 1888."

P. 554, line 1.—Omit "extraordinary."

Surety's liability after annulment.

P. 554, line 22.—As to the liability of a surety after the composition has been annulled: see *Walton* v. *Cook*, 40 Ch. D. 325, *ante*, p. 95.

Approval of composition by Court discharges debtor.

P. 555, line 19.—The words from "And unless, &c.," to the end of clause 9 should be omitted, inasmuch as the approval of the composition by the Court is equivalent to an order of discharge in bankruptcy: *Flint* v. *Barnard*, 22 Q. B. D. 90 C. A.; *Re Croom, England* v. *Provincial Assets Co.* [1891] 1 Ch. 695. This discharge is virtually a conditional one as the Court has power, on default of the debtor in payment of the composition, to annul the composition and adjudge the debtor bankrupt (sub-s. 15 of s. 3 of the Bankruptcy Act, 1890). Any attempt to interfere with the powers of the Court as to discharge would not only be futile but might vitiate the arrangement: see *Ex parte Clark, Re Clark*, 13 Q. B. D. 426, C. A.

Corrigendum.

P. 556, note (*c*).—For "Bankruptcy Act, 1883," read "Bankruptcy Acts, 1883 and 1890."

What provisions in statutory compositions are reasonable.

P. 557, note (*a*).—As to what statutory compositions or schemes of arrangement are or are not reasonable, see the cases collected, *ante*, p. 90. It may be observed that the provisions of this Precedent as altered (see below), do not conflict with any principle laid down in any of these decisions, nor, it is conceived, with any enactment of the present bankruptcy statutes or any rule thereunder.

Corrigenda.

P. 558, line 4.—For "the first meeting," read "a meeting."

P. 558, line 18.—For "remunerations," read "fees and percentages."

P. 558, *ad fin.*—Omit recital of confirmation of scheme by subsequent meeting.

P. 566, line 31.—After the words "into effect," add "and all fees and percentages payable to the official receiver and the Board of Trade."

Addendum.

P. 567, line 2.—It would seem advisable to add at the end of clause 18, the following proviso:—

"But so that all moneys and proceeds to arise from the said joint and respective separate estates shall be respectively applied in like manner as the same would be respectively applicable under an adjudication in bankruptcy."

P. 569, note (*d*).—It would seem that clause 25 should be omitted: see *ante*, p. 111.

Corrigendum.

P. 570, line 7.—Omit "whether before or after such certificate shall have been signed as aforesaid." It may not be always advisable to insert this clause at all.

Notice of meeting.

P. 571, *ad fin.*—The form of Notice given in Precedent XVIII., is now obsolete. No special form of notice is given in the Appendix of Forms to the Bankruptcy Rules, 1890, for summoning a meeting of creditors after adjudication to consider a proposal for composition or scheme of arrangement under s. 23 of the Bankruptcy Act, 1883, and s. 6 of the Bankruptcy Act, 1890; but see Form No. 80, A., in the same Appendix, which may be readily adapted to the case of a proposal after adjudication.

Form of resolutions.

P. 572, *ad fin.*—The form of Resolutions given in Precedent XIX. is now obsolete, see now Appendix of Forms to Bankruptcy Rules, 1890, Forms No. 88 and 89 for Resolutions

accepting a composition and a scheme of arrangement respectively.

Corrigenda.

P. 575, line 15.—Omit "special;" and after "was passed," add "by a majority in number and three-fourths in value of such creditors." Omit the word "special" before "resolution" throughout the precedent.

Fees and percentages.

P. 577, line 15.—Provision should be made in clause 6 (see also clause 13), for payment of fees and percentages, as required by r. 27 of 1890, cited as 205. See *ante*, p. 111.

CONDITIONS OF SALE.

PRELIMINARY DISSERTATION.

Preparation of Particulars of Sale.

Description of property.

P. 585, line 30.—After *Phillipson* v. *Gibson*, add *Re Davis & Cavey*, 40 Ch. D. 601, 608.

Misrepresentation generally,

P. 587, line 33.—After *Flight* v. *Booth*, add *Re Davis & Cavey*, *supra*.

—must be material.

P. 588, line 9.—After *Reynell* v. *Sprye*, add *Re Fawcett & Holmes' Contract*, 42 Ch. D. 150, C. A.

Fraudulent intent, how far necessary.

P. 589, line 9.—In connexion with the general question of the effect of misrepresentation, reference should be made to the recent cases of *Derry* v. *Peek*, 14 App. Cas. 337 (which may be regarded as a leading case on the subject); *Low* v. *Bouverie*, [1891] 3 Ch. 82, C. A.; *Knox* v. *Hayman*, 67 L. T. 137; *Elkington & Co.* v. *Hürter*, [1892] 2 Ch. 452; but it must be borne in mind that what may be insufficient to sustain an action for deceit may be sufficient ground for avoiding a contract.

Purchaser must have been misled.

P. 590, line 13.—After *Phelps* v. *White*, add *Smith* v. *Chadwick*, 9 App. Cas. 187; *Hughes* v. *Twisden*, W. N. 1886, p. 64, 54 L. T. 570, 34 W. R. 498, 55 L. J. Ch. 481.

Notice.

P. 590, line 23.—After *Caballero* v. *Henty*, add *Re Davis and Cavey*, 40 Ch. D. 601.

Misrepresentation by implication.

P. 590, line 25.—After *Jones* v. *Edney*, add *Brewer* v. *Brown*, 28 Ch. D. 309.

P. 594, line 34.—After *Matthias* v. *Yetts*, add *Brewer* v. *Brown*, 28 Ch. D. 309.

P. 594, *ad fin.*.—After *Haywood* v. *Cope*, add *Davenport* v. *Charsley*, W. N. 1886, p. 25, 54 L. T. 372, 34 W. R. 391.

P. 594, note (*d*).—Add *Gorton* v. *Mackintosh*, 31 W. R. 232.

Slander of title.

P. 598, line 38.—After *Steward* v. *Young*, add *Household & Rosher* v. *Fairburn*, 51 L. T. 498.

P. 603, line 26.—After *Dyer* v. *Hargrave*, add *Aspinalls to Powell*, 60 L. T. 595; *Re Fawcett & Holmes' Contract*, 42 Ch. D. 150, C. A. — Avoidance of contract for misrepresentation.

P. 603, line 30.—After *Price* v. *North*, add *Re Terry & White's Contract*, 32 Ch. D. 14, C. A.

P. 607, line 17.—After *Smith* v. *Capron*, add *Reeve* v. *Berridge*, 20 Q. B. D. 523, C. A. — Underlease

P. 607, line 26.—After *Brumfit & Morton*, add *Re Beyfus & Masters' Contract*, 39 Ch. D. 110, C. A.; but see *Waring* v. *Scotland*, W. N. 1888, p. 132, 59 L. T. 132, 36 W. R. 756, where upon the construction of the agreement the rule in *Madeley* v. *Booth* was held not to apply.

P. 608, line 9.—After *Edwards* v. *Wickwar*, add *Cresswell* v. *Davidson*, W. N. 1887, p. 87, 56 L. T. 811. — Sale of leaseholds in lots.

P. 608, line 18.—After *Jones* v. *Edney*, add *Reeve* v. *Berridge*, 20 Q. B. D. 523, C. A.; *Re Davis & Cavey*, 40 Ch. D. 601. — Conditions of lease.

P. 609, line 34.—After *Stanley* v. *M'Gauwan*, add *Re Davis & Cavey*, *supra*. — Lessee's covenants.

P. 610, note (*g*).—After *Hampshire* v. *Wickens*, add *Bishop* v. *Taylor*, 64 L. T. 529, 39 W. R. 542; *Re Anderton & Milner's Contract*, 45 Ch. D. 476; *Re Lander & Bagley's Contract*, [1892] 3 Ch. 41. As to what are usual covenants generally, see further, Vol. III. pp. 116, *et seq.* — Usual covenants, what are.

P. 612, line 11.—After *Denne* v. *Light*, add *Brewer* v. *Brown*, 28 Ch. D. 309. — Misrepresentation as to easements, &c.

P. 618, line 32.—After *Mill* v. *Harris*, add *Re Davis & Cavey*, 40 Ch. D. 601. — Restrictive covenants.

P. 618, line 33.—After *Leckey* v. *Higgs*, add *Nottingham Patent Brick & Tile Co.* v. *Butler*, 16 Q. B. D. 778, C. A.; *Re Ebsworth & Tidy's Contract*, 42 Ch. D. 23, C. A.

P. 619, line 9.—*Dunn* v. *Flood* was affirmed on appeal, 28, Ch. D. 586, C. A. A restrictive covenant, which is binding only on the vendor personally, is no objection to title, and need not be mentioned in the particulars: see *Re Fawcett & Holmes' Contract*, 42 Ch. D. 150, C. A.

Value of property.

Pp. 621, 622.—*Palmer* v. *Johnson* was affirmed, 13 Q. B. D. 351, C. A. See also *Re Hurlbalt and Chaytor's Contract*, W. N. 1888, p. 11, 57 L. J. Ch. 421.

Area of property.

P. 623, line 10.—After *King* v. *Wilson*, add *Aspinalls to Powell*, 60 L. T. 595.

Purchase for special purpose.

P. 624, *ad fin.*—After *Denny* v. *Hancock*, add *Re Davis & Cavey*, 40 Ch. D. 601.

Alteration in property between contract and completion.

P. 625, line 33.—Where a house was put up for auction under representations that it was vacant property, and with a condition that on completion the purchaser should be let into possession or receipt of the rents, the property was still occupied by a tenant who did not vacate until more than a month after completion, whereby the purchaser lost a tenant who required immediate possession; the premises were damaged by the removal of fixtures and otherwise; it was held that the purchaser was entitled to damage for loss of the tenant and deterioration of property: *Royal Bristol Permanent Building Society* v. *Bomash*, 35 Ch. D. 390; see also *Clarke* v. *Ramuz*, [1891] 2 Q. B. 456, C. A.

Plans.

P. 628, note (*m*).—After *Willis* v. *Watney*, add *Russell* v. *Watts*, 10 App. Cas. 590. The reference to *tit.* PURCHASES is to Vol. V. pp. 168, *et seq.*

PREPARATION OF CONDITIONS.

Title to leaseholds.

P. 636, *ad fin.*—After *Thornewell* v. *Johnson*, add *Gainsborough* v. *Watcombe Terra Cotta Clay Co.*, W. N. 1885, p. 110, 53 L. T. 116, 54 L. J. Ch. 991; *Re Cox & Neve's Contract*, [1891] 2 Ch. 109. A purchaser in such cases is not relieved by the provisions as to constructive notice in the Conveyancing Act, 1882, s. 3 (i.) (ii.).

Incorporeal hereditaments, whether within V. and P. Act, 1874.

P. 637, line 13.—It would seem that the Vendor and Purchaser Act, 1874, does apply to contracts for the sale of incorporeal hereditaments: see *Jones* v. *Watts*, 43 Ch. D. 574, C. A.

Conduct of Sale.

Meaning of "land" in

P. 642, note (*q*).—The Interpretation Act, 1850 (13 & 14 Vict. c. 21), has been repealed by the Interpretation Act,

1889 (52 & 53 Vict. c. 63). For the meaning of "land" under the latter Act, see s. 3. Acts of Parliament.

P. 643, line 14.—After *Warlow* v. *Harrison*, add *Bristol, &c., Aërated Bread Co.* v. *Maggs*, 44 Ch. D. 616. Retracting biddings.

Payment of Deposit.

P. 644, line 22.—Where a purchaser has, pursuant to a condition so providing, paid his deposit to the vendor's solicitor as agent for the vendor, no action will lie against the solicitor for a return of the deposit: *Ellis* v. *Goulton*, [1893] 1 Q. B. 350, C. A. Payment to vendor's solicitor.

P. 645, line 35.—*Farrer* v. *Lacy & Co.* has been affirmed on appeal, 31 Ch. D. 42. Payment of deposit.

Completion of Purchase.

P. 646, line 5.—As to specifying a day for completion of the purchase, see *Dawes* v. *Charsley*, W. N. 1886, pp. 37, 78, C. A. Date of completion.

P. 647, line 18.—Sect. 56 of the Conveyancing Act, 1881, has been extended to the case of trustees who are vendors, who may now accordingly authorise payment to their solicitor without an express power in that behalf: see the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 2 (1). Trustees may authorise payment to solicitor.

P. 647, note (*t*).—It has been held that a solicitor producing a deed under s. 56 of the Conveyancing Act, 1881, must be the solicitor of the person who has signed the receipt, and that he must actually produce the deed: *Day* v. *Woolwich, &c., Building Society*, 40 Ch. D. 491. Solicitor must be acting for vendor.

P. 648, line 24.—Where an agreement stipulated that in case of delay in completion the vendor should receive the "rents and profits" of the premises in lieu of interest on the balance of the purchase-money, a question as to the vendor's liability to make compensation having arisen, it was held that he was entitled to rents and royalties reserved by a lease of a stone quarry forming part of the property in respect of stone gotten between the date of the contract and actual completion: Rents and profits in lieu of interest.

Leppington v. *Freeman*, W. N. 1891, p. 198, 66 L. T. 357, 40 W. R. 348, C. A.

Payment of interest on purchase money.

P. 649, line 10.—After *Birch* v. *Joy*, add *Marsh* v. *Jones*, 40 Ch. D. 563, C. A.

P. 649, line 21.—After *Re Pigott, &c.*, add *Spencer-Bell to L. & S. W. Rail. Co.*, 33 W. R. 771.

Vendor not to profit by own default.

P. 652, line 28.—After *Ex parte Bradshaw*, add *Re Young & Harston's Contract*, 31 Ch. D. 168, C. A.

Appropriation of purchase money.

P. 653, *ad fin.*—In *Re Riley to Streatfield*, 34 Ch. D. 386, the circumstances were very similar to those in *Winter* v. *Blades* (here cited), but an opposite decision was arrived at. In this case the purchaser paid the purchase-money into his own account at his bank, and gave notice to the vendor that it was there ready and lying idle. It was held by *North*, J., that the purchaser was not relieved from his liability to pay interest. His lordship laid stress on the facts that there had not been any payment to a separate account, nor any investment of the purchase-money, and that the money was not making interest for the person entitled to it as it ought to have been if the purchaser intended to rely upon any appropriation.

Delivery of Abstract.

Delivery of abstract.

P. 655, line 2.—As to what is a reasonable time for delivery of the abstract, see *Compton* v. *Bagley*, [1892] 1 Ch. 313.

P. 655, note (*x*).—*Re Johnson & Tustin* was reversed on appeal, 30 Ch. D. 42, C. A. For later cases on this point, see *sub tit.* ABSTRACTS, *ante*, p. 6.

Delivery of Requisitions.

Delivery of requisitions.

P. 657, *ad fin.*—After *Warde* v. *Dickson*, add *Re Cox & Neve's Contract*, [1891] 2 Ch. 109.

Condition for rescission.

P. 659, line 39.—In *Hardman* v. *Child*, 28 Ch. D., at p. 718, *Pearson*, J., expressed his opinion that it was not in general proper that a condition for rescission should extend to objections or requisitions as to conveyance.

P. 660, line 2.—The words "notwithstanding any previous negotiation or litigation" in a condition for rescission have

been held not to include a final judgment adverse to the title: *Re Arbib & Class's Contract*, [1891] 1 Ch. 601, C. A.

P. 660, line 11.—After *Duddell* v. *Simpson*, add *Ashburner* v. *Sewell*, [1891] 3 Ch. 405. Waiver of objection.

P. 660, line 21.—*Re Dames & Wood* has been affirmed on appeal, 29 Ch. D. 626, C. A. (See also same case, *ad fin.*)

P. 661, line 3.—More recent cases seem to establish the proposition that, in the absence of any evidence of caprice or bad faith, it will not be inferred that vendors are acting unreasonably in rescinding a contract on the ground of unwillingness to comply with the requisition: *Re Star Bowkett Building Society & Sibun's Contract*, 42 Ch. D. 375, C. A: see also *Re Glenton & Saunders to Haden*, 53 L. T. 434, C. A.; *Woolcott* v. *Peggie*, 15 App. Cas. 42, P. C. "Unwillingness" with regard to rescission.

P. 661, line 21.—As to how far a vendor can by condition protect himself from forfeiting, on the ground of misrepresentation, his right to rescind, see *Re Terry & White's Contract*, 32 Ch. D. 14, C. A., where *Whittemore* v. *Whittemore* and *Cordingley* v. *Cheeseborough* are commented on. When vendor cannot rescind.

P. 661, line 31.—After *Re Monckton & Gilzean*, add *Hardman* v. *Child*, 28 Ch. D. 712.

P. 662, line 14.—*Studds* v. *Watson* is also reported in 28 Ch. D. 305. Where time is not originally made of the essence of the contract, and the vendor had not at the date of the contract power to sell the estate, the purchaser may fix a day after which he will not be bound: *Lee* v. *Soames*, 59 L. T. 366, 36 W. R. 884. Time made essence of contract.

P. 663, *ad fin.*—A purchaser is entitled to repudiate on the ground of a defective title, even though after repudiation the vendor shows *aliunde* that he can make a good title: *Saxby* v. *Thomas*, W. N. 1891, p. 4, 63 L. T. 695, reversed on appeal on the ground that the title was never defective: W. N. 1891, p. 28, 64 L. T. 65. The Court will not force a title upon a purchaser where there is a reasonable probability of litigation ensuing on the completion of the purchase: *Re New Land Development Association and Gray*, [1892] 2 Ch. 138, C. A. Purchaser's right to good title.

Commencement of Title.

Right to good title may be rebutted.

P. 664, line 15.—After *Re Gloag & Miller's Contract*, add *Ellis* v. *Rogers*, 29 Ch. D. 661, C. A., where upon the facts it was held that the purchaser was entitled to repudiate.

Condition to assume fact which is root of title.

P. 665, line 17.—A vendor may by condition require the purchaser to assume a fact which the vendor believes to be true, though such fact goes to the root of the title, *e.g.*, the death of A. intestate: *Re Sandbach & Edmondson's Contract*, [1891] 1 Ch. 99, C. A.

Incumbrances.

A vendor, who contracts to sell such interest only (if any) as he has, is bound to convey such interest free from existing incumbrances: *Goold* v. *Birmingham, Dudley and District Bank*, 58 L. T. 560.

Purchaser's right to rescission.

P. 666, *ad fin.*—After *Re Marsh & Earl Granville*, add *King* v. *Chamberlayn*, W. N. 1887, p. 158. See also *Farnham Brewery Co.* v. *Hunt*, 68 L. T. 440. Where delay in completion is owing to a defect, not in title, but in conveyance, the purchaser cannot rescind except after giving reasonable notice of his intention to do so: *Hatten* v. *Russell*, 38 Ch. D. 334.

Objections on evidence acquired aliunde.

P. 667, line 32.—After *Shepherd* v. *Keatly*, add *Nottingham Patent Brick & Tile Co.* v. *Butler*, 15 Q. B. D. 261, 271, affirmed on appeal, 16 Q. B. D. 778; *Re Cox & Neve's Contract*, [1891] 2 Ch. 109.

Limitation of right to title.

P. 669, line 32.—After *Feilden* v. *Slater*, add *Re Cox & Neve's Contract*, [1891] 2 Ch. 109. See as to want of registration in Middlesex, *Girling* v. *Girling*, W. N. 1886, p. 18.

Verification of the Abstract.

Statutory provision as to production of deeds, &c.

P. 675, note (*d*).—The decision in *Re Johnson & Tustin* was reversed, 30 Ch. D. 42. See also cases cited *ante*, p. 6. As to costs occasioned by mortgages effected by the vendor, and of obtaining the concurrence of his mortgagees, see *Re Willett & Argenti*, W. N. 1889, p. 66, 60 L. T. 735.

P. 678, note (*e*).—*Vide supra.*

P. 681, line 11.—As to conditions with regard to documents unstamped or insufficiently stamped, see now s. 117 of the Stamp Act, 1891, referred to *sub tit.* STAMP DUTIES, *post*, p. 339.

Fixtures, Timber, Crops, &c.

Rights of parties to fixtures.

P. 684, line 16.—After *Mather* v. *Fraser*, add *Re Yates, Batcheldor* v. *Yates*, 38 Ch. D. 112, C. A.

Timber.

P. 685, note (*h*).—After *Honywood* v. *Honywood*, add *Dashwood* v. *Magniac*, [1891] 3 Ch. 306, C. A.

Valuation.

P. 686, *ad fin.*—The Common Law Procedure Act, 1854, s. 12, is now repealed by the Arbitration Act, 1889 (52 & 53 Vict. c. 49). By s. 27 of the latter Act a submission is defined as a "written agreement to submit present or future differences to *arbitration*," which term, according to the decisions here cited, does not include a valuation. After *Turner* v. *Goulden*, add *Re Carus Wilson & Greene*, 18 Q. B. D. 7, C. A.

Apportionment of rent.

P. 687, line 34.—After *Bliss* v. *Collins*, add *Mayor of Swansea* v. *Thomas*, 10 Q. B. D. 48.

Tithe and land tax.

P. 688, line 13.—The stat. 6 & 7 Will. IV. c. 71 has been amended by the Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54). The effect of the latter Act is to exempt from land tax the annual rent-charge thereby substituted for the extraordinary rent-charge imposed by the earlier Act in respect of hop grounds, orchards, and market gardens: *Carr* v. *Fowle*, [1893] 1 Q. B. 251.

Apportionment of tithe rent-charge.

P. 683, line 20.—Where tithe rent-charge extends over the property sold, and also over property belonging to persons other than the vendor, the purchaser cannot require the vendor, even in the absence of any condition, to procure at his own expense the apportionment of the charge: *Re Ebsworth & Tidy's Contract*, 42 Ch. D. 23, C. A.

Life policies.

P. 689, line 31.—The question of insurable interests in life policies within the stat. 14 Geo. III. c. 48 is discussed *sub tit.* MORTGAGES, Vol. III. pp. 826, *et seq.*, and see *post*, p. 186.

Easements.

P. 690, line 5.—After *Wheeldon* v. *Burrows*, add *Russell* v. *Watts*, 10 App. Cas. 590; *Ford* v. *Metropolitan, &c., Rail. Cos.*, 17 Q. B. D. 12, C. A.; *Brown* v. *Alabaster*, 37 Ch. D. 490; *Birmingham, &c., Banking Co.* v. *Ross*, 38 Ch. D. 295, C. A.

P. 690, line 13.—*Dunn* v. *Flood* is now reported, 28 Ch. D. 586, C. A.

Right of way.

P. 690, line 23.—A right of way, unknown to the vendor and purchaser at the date of the contract, is a latent defect of title, so as to enable a vendor to avail himself of the covenant in the usual form, enabling him to rescind the contract: *Ashburner* v. *Sewell*, [1891] 3 Ch. 405.

Succession duty.

P. 690, note (*j*).—After *Cooper* v. *Trewby*, add *Re Langham*, W. N. 1890, p. 213, 60 L. J. Ch. 110.

Compensation.

Power of Court to award damages.

P. 691, line 34.—It should be observed that Lord Cairns' Act was repealed by the Statute Law Revision Act, 1883; but such repeal does not affect the jurisdiction established by the repealed Act: see s. 5 of the Act of 1883. The Judicature Acts have conferred on the Court large powers of awarding damages for non-completion of a contract. The plaintiff need not now prove his right to specific performance of the contract to entitle him to damages for breach thereof: *Elmore* v. *Pirrie*, W. N. 1887, p. 167, 57 L. T. 333.

Vendor's rights where no condition.

P. 693, line 6.—After *Re Arnold*, add *Re Terry & White's Contract*, 32 Ch. D. 14, C. A.

Misrepresentation as to tenure.

P. 693, line 10.—After *Fordyce* v. *Ford*, add *Re Beyfus & Masters's Contract*, 39 Ch. D. 110, C. A.

Performance with allowance.

P. 693, line 35.—After *King* v. *Wilson*, add *Re Fawcett & Holmes' Contract*, 42 Ch. D. 150, C. A.

Erratum.

P. 697, line 5.—For "*Barrow*" read "*Burrow*."

Rights of vendor under conditions as to compensation.

P. 700, line 33.—After *Weston* v. *Savage*, add *Re Beyfus & Masters's Contract*, *supra*. Of course, the terms of the condition may be such as to compel the purchaser to take the vendor's interest in the property, whatever its nature may turn out to be: *Waring* v. *Scotland*, W. N. 1888, p. 32, 59 L. T. 132, 36 W. R. 756.

Effect of misrepresentation.

P. 701, line 27.—After *Brewer* v. *Brown*, add *Re Davis & Cavey*, 40 Ch. D. 601.

P. 701, line 35.—After *Phillips* v. *Caldcleugh*, add *Re Terry & White's Contract*, 32 Ch. D. 14, 29, C. A.

Measure of compensation.

P. 706, line 18.—As to computation of compensation, where the particulars erroneously stated that a road on the property was "made up," see *Re Chifferiel*, *Chifferiel* v. *Watson*, 40 Ch. D. 45.

Where there is a condition for compensation.

P. 709, *ad fin.*—In *Clayton* v. *Leech*, 41 Ch. D. 103, the effect of the decision in *Palmer* v. *Johnson* was considered by the Court of Appeal, who, while again disapproving of the decision in *Manson* v. *Thacker*, followed *Besley* v. *Besley*, and held that neither that case nor *Allan* v. *Richardson* could be considered as overruled by *Palmer* v. *Johnson*, for that the decision in that case turned on the terms of an express condition as to compensation, which condition did not exist in the other cases.

Corrigendum.

P. 712, line 1.—For Common Law Procedure Act, 1854, see now the Arbitration Act, 1889, and see *ante*, p. 121.

Costs of concurrence of parties.

P. 714, line 5.—As to costs of obtaining concurrence of the vendor's mortgagees, see *Re Willett & Argenti*, W. N. 1889, p. 66, 60 L. T. 735.

Addendum.

P. 716, line 15.—*Re Sawyer, &c.*, is also reported, W. N. 1884, p. 192.

Custody and Production of Documents.

Married woman tenant for life.

P. 719, line 10.—As to the right to custody of title deeds of land, of which a married woman is legal tenant for life, but not for her separate use, see *Ex parte Rogers, Re Pyatt*, 26 Ch. D. 31, C. A.

Estate in mortgage.

P. 719, *ad fin.*—*Colyer* v. *Finch* is also reported, 5 H. L. C. 905. After this case, add *Manners* v. *Mew*, 29 Ch. D. 725; see further as to priority of incumbrancers by possession of deeds, *sub tit.* MORTGAGES, Vol. III. pp. 899 *et seq.*, where is set out s. 16 of the Conveyancing Act, 1881, giving power to the mortgagor to inspect title deeds which are in the possession of his mortgagee. See also *post*, pp. 201, 202.

Loss of deeds by mortgagee.

P. 720, *ad fin.*—After *Schoole* v. *Sall*, add *Caldwell* v. *Matthews*, W. N. 1890, p. 84, 62 L. T. 799.

Meaning of "land" in Acts of Parliament.

P. 725, *ad fin.*—The Act 13 & 14 Vict. c. 21, is repealed by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which re-enacts the definition of "land" in the earlier Act. The term "hereditaments" in this definition apparently includes incorporeal hereditaments, see *Jones* v. *Watts*, 43 Ch. D. 574, C. A.

Re-sale and Forfeiture of Deposit.

Addenda.

P. 727, *ad fin.*—*Catton* v. *Bennett* is also reported, 26 Ch. D. 161.

P. 728, line 16.—*Howe* v. *Smith* is also reported, 27 Ch. D. 84, C. A.

Recovery of deposit by purchaser.

P. 728, *ad fin.*—Where a purchaser had made default in completion of his contract and forfeited his deposit, and the vendor subsequently sold the same property to another purchaser who discovered a fatal flaw in the title, it was held that the original purchaser was not entitled to a return of his deposit: *Soper* v. *Arnold*, 14 App. Cas. 429.

When vendors contract as trustees for sale, and it turns out that they have no power to sell, they cannot compel the purchaser to enter into a new contract with and take a conveyance from the tenant for life under the Settled Land Acts; in such a case the purchaser may rescind and claim return of his deposit with interest: *Re Bryant and Barningham's Contract*, 44 Ch. D. 218, C. A. Not so, however, as it would seem, if the trustees have power to sell with consent and they promptly obtain the necessary consent: *Re Head's Trustees & Macdonald*, 45 Ch. D. 310, C. A.

Sales by Trustees.

Costs.

P. 730, line 8.—See as to costs, *Plowright* v. *Lambert*, 52 L. T. 646, where *Baker* v. *Carter* was not followed.

Pp. 730, 734.—*Dunn* v. *Flood*, is also reported, 28 Ch. D. 586, C. A.

The Memorandum.

Description of vendor.

P. 737, line 35.—The expressions "vendor," or "client," or "friend" of a named agent, are not a sufficient description of the vendor: *Jarrett* v. *Hunter*, 34 Ch. D. 182.

What is sufficient reference to terms of contract.

P. 738, line 14.—After *Studds* v. *Watson*, add *Oliver* v. *Hunting*, 44 Ch. D. 205.

DISCLAIMER.

PRELIMINARY DISSERTATION.

Disclaimers Generally.

Devise of onerous and beneficial property together.

P. 837, line 5.— After *Andrew* v. *Trinity College*, add *Syer* v. *Gladstone*, 30 Ch. D. 614.

P. 837, line 10. — After *Guthrie* v. *Walrond*, add *Re Hotchkys*, *Freke* v. *Calmady*, 32 Ch. D. 408, C. A.

Parol disclaimer.

P. 838, line 5.—After *Stacey* v. *Elph*, add *Re Birchall*, *Birchall* v. *Aston*, 40 Ch. D. 436, C. A.

Disclaimers by Trustees in Bankruptcy.

Disclaimer of onerous property.

P. 843, line 15.—Sect. 55 of the Bankruptcy Act, 1883, is now modified by s. 13 of the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), which is as follows :—

"The period of twelve months shall be substituted for each of the periods of three months and two months, limited by sub-section one of section fifty-five of the principal Act, and such period of twelve months may be extended by the Court.

The Court may, if it thinks fit, modify the terms prescribed by the proviso in sub-section six of the same section, so as to make the person in whose favour the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the bankruptcy petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order."

The effect of this section is to alter the limit of time within which a trustee in bankruptcy may disclaim onerous property and to give the Court power to extend such time, thereby (as regards the latter provision) adopting the view taken by *Cave*, J., in *Ex parte Foreman, Re Price*, 13 Q. B. D. 466; see also *Ex parte Official Receiver, Re Barker*, 8 Mor. 116, C. A.

Statutory

P. 844, line 18.—The statutory forms having reference to

forms of disclaimer.

disclaimer, will be found in the Appendix to the Bankruptcy Rules, 1886 & 1890: Nos. 119, 119A, 119B, 120, 120A, 120C, 120D, 120E.

Provisions of Bankruptcy Rules as to disclaimer.

P. 844, line 25.—Rule 232 of the Bankruptcy Rules, 1883, is annulled. The corresponding rule is rule 69 of the Bankruptcy Rules, 1890 (cited as 320), which is as follows:—

(1.) A lease may be disclaimed without the leave of the Court in any of the following cases, viz.:—

i. Where the bankrupt has not sub-let the demised premises or any part thereof, or created a mortgage or charge upon the lease; and

(*a.*) The rent received and real value of the property leased, as ascertained by the property tax assessment, are less than £20 per annum; or

(*b.*) The estate is administered under the provisions of section 121 of the Act of 1883; or

(*c.*) The trustee serves the lessor with notice of his intention to disclaim, and the lessor does not within seven days after the receipt of such notice give notice to the trustee requiring the matter to be brought before the Court.

ii. Where the bankrupt has sub-let the demised premises, or created a mortgage or charge upon the lease, and the trustee serves the lessor and the sub-lessee or the mortgagees with notice of his intention to disclaim, and neither the lessor nor the sub-lessee or the mortgagees, or any of them, within 14 days after the receipt of such notice, require or requires the matter to be brought before the Court.

(2.) The notices shall be in the Forms Nos. 119A and 119B in the Appendix, with such variations as circumstances may require.

(3.) Except as provided by this Rule, the disclaimer of a lease without the leave of the Court shall be void.

(4.) Where a trustee disclaims a leasehold interest he shall forthwith file the disclaimer with the proceedings in the Court; and the disclaimer shall contain particulars of the interest disclaimed, and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the trustee the disclaimer shall be inoperative.

(5.) Where in pursuance of notice by the trustee of his intention to disclaim a leasehold interest, the lessor, sub-lessee, or mortgagee requires the trustee to apply to the Court for leave to disclaim, the costs of the lessor, sub-lessee, or mortgagee shall not be allowed out of the estate of the bankrupt except in cases

in which the Court is satisfied that such application was necessary in order to do justice between the parties.

(6.) A disclaimer made without leave of the Court under this rule shall not be void or otherwise affected on the ground only that the notice required by this rule has not been given by some person who claims to be interested in the demised property.

(7.) Where any person claims to be interested in any part of the property of the bankrupt burdened with onerous covenants, he shall, at the request of the official receiver or trustee, furnish a statement of the interest so claimed by him.

Addendum.

P. 845, note (*g*).—*Ex parte Zerfass, Re Sandwell*, is now reported, 14 Q. B. D. 960.

Leave to disclaim.

P. 846, line 23.—A trustee may include in one application for leave to disclaim several distinct properties so long as there is some one chief respondent who is affected by the whole application: *Re Whitaker*, 21 Q. B. D. 261.

Effect of disclaimer as regards bankrupt.

P. 847, line 11.—After *Ex parte Llynvi, &c. Co.*, add *Hardy* v. *Fothergill*, 13 App. Cas. 351.

Addendum.

P. 848, line 28.—*Lybbe* v. *Hart* is now reported, 29 Ch. D. 8, C. A.

P. 849, line 7.—The reference to *tit.* LEASES, is to Vol. III. pp. 309, *et seq.*

Liability of non-disclaiming trustee.

P. 851, line 23.—After *Hopkinson* v. *Lovering*, add *Re Smith, Ex parte Hepburn*, 25 Q. B. D. 536, C. A.

P. 853, line 26.—The reference to *tit.* LEASES, is to Vol. III. p. 233.

Vesting orders.

P. 855, line 29.—Under sub-s. (6) of s. 55 of the Bankruptcy Act, 1883, where the trustee in the bankruptcy has disclaimed a lease which the bankrupt has mortgaged by sub-demise, the original lessor may apply for an order vesting in the mortgagee the property subject to the same obligations and liabilities as those to which the bankrupt was liable under the lease. And if the mortgagee refuses to accept such vesting order he will be excluded from all interest in and security upon the property: *Re Cock, Ex parte Shilson*, 20 Q. B. D. 343; *Re Finley, Ex parte Cloth Workers' Company*, 21 Q. B. D. 475, C. A.; and the mortgagee cannot escape from this dilemma by assigning the mortgage debt and security to a trustee for himself: *Re Smith, Ex parte Hepburn*, 25 Q. B. D. 536, C. A. As to the persons to be served with

notice of an application for a vesting order, see *Re Morgan, Ex parte Morgan*, 22 Q. B. D. 592, C. A.

In the case of a mortgage by way of assignment of the whole term, the equity of redemption is not properly burdened with onerous covenants within the meaning of s. 55 of the Bankruptcy Act, 1883, and, accordingly, the trustee need not apply to the Court for leave to disclaim the lease: *Re Gee, Ex parte Official Receiver*, 24 Q. B. D. 65.

In *Re Britton*, 61 L. T. 52, 37 W. R. 621, under the special circumstances of the case it was held that the sub-lessees of a bankrupt ought not to be excluded from all interest in the property, unless they would consent to a vesting order subjecting them to the liabilities of the lease.

Costs.

The costs of a trustees' application under s. 55 of the Bankruptcy Act, 1883, to disclaim leaseholds, are costs of a "proceeding under the Act," and, accordingly, as a rule, are payable out of the estate; and, if the assets are under 300*l.*, such costs will be taxed on the lower scale, under r. 112 (2), of the Bankruptcy Rules, 1886: *Re Procter, Ex parte Board of Trade*, [1891] 2 Q. B. 433.

Mortgage of leaseholds.

As to the effect of this sub-section upon the question whether a mortgage of leaseholds should be by assignment or sub-demise, see *sub tit.* MORTGAGES, *post*, p. 205.

ENFRANCHISEMENT OF COPYHOLDS.

PRELIMINARY DISSERTATION.

Enfranchisement at Common Law.

Whether copyholder for a particular estate can destroy the tenure for ever.

Pp. 868 to 872.—In *Ex parte School Board for London, Re Hart*, 41 Ch. D. 547, *North*, J., held that, whatever might be the result, if the person to whom the enfranchisement was made had been a tenant for life, when he is the tenant in tail in possession, the enfranchisement has the effect of barring the entail, and that *Challoner* v. *Murhall*, and *Dunn* v. *Green*, were clear authorities on that point.

Rights of common.

P. 873, *ad fin.*—After *Worledge* v. *Kingswel*, add *Hall* v. *Byron*, 4 Ch. D. 667; see also *Baring* v. *Abingdon*, [1892] 2 Ch. 374, C. A. Rights of common annexed to customary freeholds are not extinguished by enfranchisement, *ibid.*

Presumption of enfranchisement.

P. 874, line 23.—After *Turner* v. *West Bromwich Union*, add *Re Lidiard and Jackson's Contract*, 42 Ch. D. 254, where *Kay*, J., held that, after a long lapse of time during which the lord had taken no steps to enforce his rights, an enfranchisement might be presumed even though some of the title deeds recited that the property was copyhold.

Statutory Enfranchisement.

Voluntary Enfranchisement under Copyhold Acts.

Extension of Copyhold Acts.

Pp. 874, *et seq.*—The Copyhold Acts here mentioned are now modified and extended by the Copyhold Act, 1887 (50 & 51 Vict. c. 73), which, amongst other provisions, repeals s. 12 of the Copyhold Act, 1843, ss. 4, 7, 9, and 24 of the Copyhold Act, 1852, and s. 7 of the Copyhold Act, 1858, and specifically amends various other sections of these Acts.

The Act does not affect enfranchisements commenced under previous Acts (see s. 37).

In addition to this repeal, the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), repeals ss. 1, 2, 4, 5, 7, 8 and 9 of the Copyhold Act, 1841.

Board of Agriculture.

P. 874, note (*i*).—By the Board of Agriculture Act, 1889, the powers of the Land Commissioners were transferred to the Board of Agriculture, and by the same Act, s. 48 (down to the end of sub-s. 5) of the Settled Land Act, 1882, is repealed.

Voluntary Enfranchisement under the Copyhold Acts.

Repeal.

P. 878, line 21.—The stat. 1 Geo. IV., c. 35, was repealed by the Statute Law Revision Act, 1861.

P. 881, line 16.—By the Statute Law Revision Act, 1874, No. 2 (37 & 38 Vict. c. 96), so far as regards the words "award," "schedule of apportionment," s. 93 of the Copyhold Act, 1841 (4 & 5 Vict. c. 35), is repealed.

Compulsory Enfranchisement under the Copyhold Acts.

Act of 1887, s. 9.

P. 882, line 13.—In s. 6 of the Copyhold Act, 1858, "instead of the words 'admittance or death,' shall be read the words 'admittance or enrolment on alienation,' and instead of the final word 'heriot' shall be read the word 'enrolment'" (see the Copyhold Act, 1887, s. 9).

Extinguishment of manorial incidents.

P. 883, line 18.—Subject to the provisions of s. 48 of the Copyhold Act, 1852, any lord or tenant may compel the extinguishment of all manorial incidents (see the Copyhold Act, 1887, s. 7).

Repeal. Valuation.

P. 883, *ad fin.*—Sect. 7 of the Copyhold Act, 1852, is repealed by the Copyhold Act, 1887. As to the power of the Commissioners (now the Board of Agriculture), to control the valuation: see *The Queen* v. *Land Commrs. of England*, 23 Q. B. D. 59, C. A.

Death of copyholder pending enfranchisement.

P. 886, line 8.—By s. 31 of the Copyhold Act, 1887, it is provided that in case of death, proceedings shall not abate.

Compensation to steward.

P. 886, line 22.—Under s. 27 of the Copyhold Act, 1887, the compensation payable to the steward is prescribed by a scale set out in the schedule to the Act.

Consideration to lord.

P. 886, line 32.—Sect. 7 of the Copyhold Act, 1852, is repealed by the Copyhold Act, 1887, but its provisions are in substance re-enacted by s. 14 of the later Act. As to the additional powers given by this Act for enforcing a rent-charge, see s. 16, and *Searle* v. *Cooke*, 43 Ch. D. 519, C. A.

Charge of compensation on land.

P. 886, line 36.—As to power to charge land enfranchised with compensation money, see s. 23 of the Copyhold Act, 1887.

Payment to limited owners.

P. 886, *ad fin.*—In the case of an enfranchisement under the award or with the consent of the Commissioners (now the Board of Agriculture), the lord for the time being, although his estate is limited, can give a complete discharge for the compensation money (see the Copyhold Act, 1887, s. 25).

Enfranchisement under the Lands Clauses Act.

Measure of compensation.

P. 893, note (*c*).—Where a railway company compulsorily took copyhold land and no enfranchisement was obtained, upon the application of the lord of the manor, twelve years afterwards, for enfranchisement and compensation, it was held that he was entitled to compensation based upon the value of the land at the time when the land was so compulsorily taken and the right to enfranchisement arose, not upon its later improved value, but that he was also entitled to the interim fines payable between the taking of the land and the proceedings for enfranchisement, such fines being assessed according to the improved annual value of the land: *Lowther* v. *Caledonian Railway Company*, [1892] 1 Ch. 73, C. A.

ENLARGEMENT OF LONG TERMS.

PRELIMINARY DISSERTATION.

Statutes of Limitations do not apply to rent reserved by lease.

P. 912, note (*a*).—After *Archbold* v. *Scully*, add *Irish Land Commission* v. *Grant*, 10 App. Cas. 14; *Webster* v. *Southey*, 36 Ch. D. 9, at p. 19.

Rent having no money value.

P. 914, note (*c*).— The case of *Re Stott and Fry* is also reported in a note, 29 Ch. D. 1009. In *Chapman* v. *Hobbs*, 29 Ch. D. 1007, *Pearson*, J., held that a yearly rent of "one silver penny if lawfully demanded," was a rent having no money value.

PRECEDENTS.

Risk of forfeiture.

Pp. 919 to 923.—If the original lease cannot be produced so as to show that no rent having a money value was reserved there might perhaps be some risk that the attempted enlargement might be deemed to be a repudiation of the lessor's title, so as to occasion a forfeiture.

It is positively laid down by Baron *Gilbert*, that an ineffectual disclaimer does not operate as a forfeiture, see Bac. Abr. *tit.* LEASES; but the point has not been judicially decided. To obviate all risk on the point it may be prudent in such a case to insert the following words in the deed of enlargement:—

"In exercise and to the extent of the power in this behalf conferred on him by the 65th section of the Conveyancing and Law of Property Act, 1881, but not further or otherwise, hereby declares," &c. [*as in the text*].

EXCHANGE.

PRELIMINARY DISSERTATION.

Definition of land in Acts of Parliament.

P. 927, note (*b*).—The stat. 13 & 14 Vict, c. 21, is repealed by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), but the definition of "land" here referred to, is re-enacted in identical terms in the later Act (see s. 3).

Creation of easements on exchange.

Sect. 3 of the Settled Land Act, 1882, contained no express power to exchange easements over the settled land, but now by s. 5 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69) it is enacted as follows:—

"On an exchange or partition any easement, right, or privilege of any kind may be reserved or may be granted over or in relation to the settled land or any part thereof, or other land, or an easement, right, or privilege of any kind, may be given or taken in exchange, or on partition for land or for any other easement, right, or privilege of any kind."

Exchange of mansion-house, park, etc., under S. L. Acts.

P. 927, note (*c*).—Sect. 15 of the Settled Land Act, 1882, is repealed by s. 10 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69). The same section also enacts as follows:—

(2.) "Notwithstanding anything contained in the Act of 1882, the principal mansion-house (if any) on any settled land, and the pleasure grounds and park and lands (if any) usually occupied therewith, shall not be sold, exchanged, or leased by the tenant for life without the consent of the trustees of the settlement or an order of the Court."

(3.) "Where a house is usually occupied as a farmhouse, or where the site of any house and the pleasure grounds and park and lands (if any) usually occupied therewith do not exceed together twenty-five acres in extent, the house is not to be deemed a principal mansion-house within the meaning of this section."

By this section "exchanged" is now included, and the criticism in this note is thereby rendered obsolete. The expression

"pleasure grounds and park" is now substituted for the word "demesnes."

The exception in sub-s. (3), is new.

P. 929, line 25.—The Stamp Act, 1870, is repealed by the Stamp Act, 1891 (54 & 55 Vict. c. 39), but this section is substantially re-enacted by s. 73 of the new Act.

INDEMNITY.

PRECEDENTS.

Precedent III.—Bond of Indemnity from a Vendor to a Purchaser against the Loss of Title Deeds.

Loss of Title Deeds.

P. 947, note (*b*).—As to the right to indemnity in case of the loss of title deeds, see *James* v. *Rumsey*, 11 Ch. D. 398; *Caldwell* v. *Matthews*, W. N. 1890, p. 84, 62 L. T. 799.

LEASES.

PRELIMINARY DISSERTATION.

Chapter I.—Who may be Lessors and Lessees.

Who may be Lessors.

Leases by estoppel.

P. 5, line 28.—In an action for rent by an alleged assignee of the reversion, where rent had been paid to the assignee by the tenant, it was held to be no defence for the tenant to show that the assignee had no title to the reversion: *Carlton* v. *Bocock*, 51 L. T. 659.

Concurrent leases under powers.

P. 13, line 20.—See as to concurrent leases, Sugd. Powers, 768, *et seq.* It is obvious concurrent leases cannot be granted under the Settled Land Acts, inasmuch as such leases are required by statute to contain a condition of re-entry, and, so long as the original lease exists there can be no effective re-entry.

"Best rent.

P. 15, line 1.—After *Roe* v. *Archbishop of York*, add *Gas Light and Coke Co.* v. *Towse*, 35 Ch. D. 519. Past voluntary expenditure by a lessee on buildings comprised in the lease must not be taken into consideration: *Re Chawner's Settled Estates*, [1892] 2 Ch. 192.

Impeachment of waste.

P. 19, *ad fin.*—Where a tenant by the curtesy demised certain houses under the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), and the lessee covenanted to repair and to deliver up at the end of the term in good repair, "fair wear and tear only excepted," it was held that the exception rendered the tenant not impeachable for waste and that the lease was accordingly not a good exercise of the statutory power: *Davies* v. *Davies*, 38 Ch. D. 499.

Settled lands.

P. 25, *ad fin.*—Where settled land is held under a renewable lease the Court has no power under ss. 4 and 5 of the Settled Estates Act, 1877, to authorise a sub-lease of the settled land for the unexpired residue of the term, with a covenant for extension of the term by a further sub-lease after

the renewal of the head-lease, as such further sub-lease would not "take effect in possession," within the meaning of the Act: *Re Farnell's Settled Estates*, 33 Ch. D. 599.

P. 27, note (*q*).—Where there is no beneficial owner of the rents and profits, the trustees in whom the legal estate is vested, may present a petition under the Act: *Vine* v. *Raleigh*, 24 Ch. D. 238.

Settled lands.

Pp. 28 to 42.—As to fines on leases of settled lands, see Settled Land Act, 1884, s. 4, *sub tit.* SETTLEMENTS, Vol. VI., p. 444.

As to granting building leases with an option to purchase, see Settled Land Act, 1889, s. 2, *sub-tit.* SETTLEMENTS, Vol. VI., p. 706, *n.*

As to notice to trustees of intention to lease, see Settled Land Act, 1884, s. 5, *sub tit.* SETTLEMENTS, Vol. VI., p. 482.

By the Settled Land Act, 1890 (53 & 54 Vict. c. 69), it is enacted as follows:

Provision as to leases for 21 years.

Sect. 7. A lease for a term not exceeding twenty-one years at the best rent that can be reasonably obtained without fine, and whereby the lessee is not exempted from punishment for waste, may be made by a tenant for life—

(1.) Without any notice of an intention to make the same having been given under section forty-five of the Act of 1882; and

(2.) Notwithstanding that there are no trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890; and

(3.) By any writing under hand only containing an agreement instead of a covenant by the lessee for payment of rent in cases where the term does not extend beyond three years from the date of the writing.

Provisions as to mining leases.

Sect. 8. In a mining lease—

(1.) The rent may be made to vary according to the price of the minerals or substances gotten, or any of them;

(2.) Such price may be the saleable value, or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in any manner prescribed by the lease (including a reference to arbitration), or may be an average of any such prices or values taken during a specified period.

Mansion and park, &c.

By s. 10, the principal mansion-house on any settled land and the pleasure grounds and park, and lands (if any), usually occupied therewith, are not to be leased by the tenant for life

without the consent of the trustees of the settlement or an order of the Court, set out *ante*, p. 133.

Meaning of "land."

P. 30, note (*u*).—As to the definition of "land" under the Interpretation Act, 1889 (52 & 53 Vict. c. 63), see *ante*, p. 133.

Meaning of "month."

P. 31, note (*b*).—The definition of "month" here given is re-enacted by s. 3 of the Interpretation Act, 1889.

Mortmain, &c. Act, 1888.

P. 38, note (*x*).—As to charitable conveyances, see the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), repealing the statute 9 Geo. II., c. 36. The Act of 1888 is stated and considered in Vol. VI., pp. 867, *et seq.*

Tenants in common.

P. 44, line 3.—The rule here stated does not apply to covenants on the part of lessees who are tenants in common. Thus, where, in a demise to A. and B. as tenants in common, the covenants by A. and B. were joint in form, it was held that the liability of the covenantors was joint only, not several: *White* v. *Tyndall*, 13 App. Cas. 263.

P. 44, line 11.—After *Yates* v. *Cole*, add *Leigh* v. *Dickeson*, 15 Q. B. D. 60, C. A.

Municipal corporations.

P. 48, line 15.—See now as to leases by municipal corporations, the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 108—111.

Ecclesiastical leases.

P. 56, note (*o*).—The provisions of the Ecclesiastical Leasing Act, 1858, are further considered in Vol. VI., pp. 854, *et seq.*, *sub tit.* SPECIAL INSTRUMENTS (notes to Precedent XVIII.).

Guardian of infant.

P. 63, line 2.—The mother if she survives the father of an infant has, either alone or jointly with any testamentary guardian appointed by the father, all such powers over the estate of the infant as a testamentary guardian has under the stat. 12 Car. II., c. 24; see the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), ss. 2 and 5, set out *ante*, p. 43.

Accruer of title of married woman.

P. 69, note (*c*).—*Baynton* v. *Collins* has been overruled by the Court of Appeal in *Reid* v. *Reid*, 31 Ch. D. 402, C. A., which has settled the question of accruer of title of married women in accordance with the decision of *Kay*, J., in *Re Adame's Trusts*.

Lunacy Act, 1890.

P. 70, line 18.—The stat. 16 & 17 Vict. c. 70, is repealed

by the Lunacy Act, 1890 (53 Vict. c. 5), which, as to leases by committees of lunatics under an order of the judge in lunacy, enacts as follows :—

Powers exerciseable by committee under order of Judge.

Sect. 120. The judge may, by order, authorise and direct the committee of the estate of a lunatic to do all or any of the following things:—

(*d.*) Grant leases of any property of the lunatic for building, agricultural, or other purposes;

(*e.*) Grant leases of minerals forming part of the lunatic's property, whether the same have been already worked or not, and either with or without the surface or other land;

(*f.*) Surrender any lease and accept a new lease;

(*g.*) Accept a surrender of any lease and grant a new lease;

(*h.*) Execute any power of leasing vested in a lunatic having a limited estate only in the property over which the power extends. . . . . .

Renewed lease to be to same uses as before.

Sect. 121. . . Any renewed lease accepted on behalf of a lunatic under the powers of this Act shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devises, and conditions, as . . . . the surrendered lease was or would but for the . . . . surrender have been subject to.

Extent of leasing power.

Sect. 122.—(1.) The power to authorise leases of a lunatic's property under this Act shall extend to property of which the lunatic is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the lunatic and all persons entitled in remainder and reversion expectant upon the estate tail of the lunatic including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the lunatic shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the lunatic or his committee would have had.

(2.) Leases authorised to be granted and accepted by or on behalf of a lunatic under this Act may be for such number of lives or such term of years, at such rent and royalties, and subject to such reservations, covenants, and conditions as the judge approves.

(3.) Fines or other payments on the renewal of leases may be paid out of the lunatic's estate, or charged with interest on the leasehold property.

Distress by mortgagor.

P. 79, line 17.—A distress by a mortgagor need not be in the name of the mortgagee: *Reece* v. *Strousberg*, 54 L. T. 133.

Attornment to mortgagee.

P. 79, *ad fin.*.—The mere continuing in possession of the tenant after receipt of a notice from the mortgagee to pay the rent to him does not amount to an agreement that he should

become tenant to the mortgagee: *Towerson* v. *Jackson*, [1891] 2 Q. B. 484, C. A.

Payment of rent to mortgagee.

P. 80, line 2.—After *Johnson* v. *Jones* (also reported 9 A. & E. 809), add *Underhay* v. *Read*, 20 Q. B. D. 209, C. A.

Lease by mortgagor under his statutory power.

P. 83, note (*k*).—Where a mortgagor has granted a lease under his statutory power without the concurrence of his mortgagees, the mortgagees will be bound by the lease and by all implied obligations not to interfere with the reasonable enjoyment of the land demised: *Wilson* v. *Queen's Club*, [1891] 3 Ch. 522. On the other hand the mortgagee on giving notice to the tenant and going into possession is entitled to enforce the covenants and conditions in the lease, and will not be affected by any collateral agreement between the lessor and lessee: *Municipal Permanent Investment Building Society* v. *Smith*, 22 Q. B. D. 70, C. A. As to the right of tenants to compensation as against a mortgagee in possession, where the contract of tenancy is not binding upon the mortgagee, see the Tenant's Compensation Act, 1890 (53 & 54 Vict. c. 57), s. 2.

Compensation to tenants of land in mortgage.

Who may be lessees.

Married woman lessee.

P. 95, line 25.—Add reference to *Surman* v. *Wharton*, [1891] 1 Q. B. 491.

Leases to charities.

P. 96, line 25.—The stat. 9 Geo. II. c. 36, is repealed by the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42). As to enrolment of leases to trustees of charities, see now s. 4, ss. (9), of the Act of 1888, set out *sub tit.* SETTLEMENTS, Vol. VI., p. 869.

P. 97, line 8.—The rule here stated would apparently apply under the Act, 51 & 52 Vict. c. 42. As to what is a lease for charitable uses, see *Webster* v. *Southey*, 36 Ch. D. 9.

CHAPTER II.—AGREEMENTS FOR LEASES.

Agreement for lease as distinguished from lease.

P. 100, line 5.—After *Allhusen* v. *Brooking*, add *Furness* v. *Bond*, W. N. 1888, p. 78; *Lowther* v. *Heaver*, 41 Ch. D. at p. 264, C. A. In *Swain* v. *Ayres*, 21 Q. B. D. 289, C. A., it was held that an agreement for a lease is not a "lease" within the meaning of s. 14 of the Conveyancing Act, 1881, so as to entitle a tenant to relief against forfeiture under that section, where there is no actual lease nor any title

to specific performance. But see now s. 5 of the Conveyancing Act, 1892, *post*, p. 153.

Specific performance of parol agreement.

P. 108, *ad fin.*—Where specific performance of a parol agreement for a lease is claimed on the ground of part-performance on the part of the tenant, the Court may admit evidence to show what the terms of the agreements were: *Farmers and Cleveland Dairy Co.* v. *Enkel*, W. N. 1890, p. 126.

Specific performance.

P. 109, line 28.—After *Marshall* v. *Berridge*, add *Re Lander and Bagley's Contract*, [1892] 3 Ch. 41. Where the date is not expressly fixed nor can be inferred from the context, the words "immediate possession" do not fix the commencement of the term so as to entitle the intending lessee to enforce specific performance of an agreement for a lease: *Rock Portland Cement Co.* v. *Wilson*, 31 W. R. 193; 48 L. T. 386. See also *Wood* v. *Aylward*, 58 L. T. 662. As to an agreement between A. and B. that B. shall enter into an agreement with C. for a lease, see *Foster* v. *Wheeler*, 36 Ch. D. 695.

P. 109, line 38.—After *Baumann* v. *James*, add *Hawkesworth* v. *Chaffey*, W. N. 1886, p. 2, 54 L. T. 72.

Easement.

P. 111, line 6.—Sect. 2 of the Vendor and Purchasers Act, 1874, applies to an agreement for the demise of an easement: *Jones* v. *Watts*, 43 Ch. D. 574, C. A.

Constructive notice.

P. 111, line 23.—After *Patman* v. *Harland*, add *Clacton-on-Sea Hotel Co.* v. *Aberdeen*, W. N. 1888, p. 54.

P. 112, *ad fin.*—In order to fix an intending under-lessee with constructive notice of the provisions of the head-lease he must have had a fair opportunity of ascertaining what they were: *Hyde* v. *Warden*, 3 Ex. D. 72, C. A. This principle applies equally to an agreement to purchase a lease: *Reeve* v. *Berridge*, 20 Q. B. D. 523, C. A.; *Re Davis and Cavey*, 40 Ch. D. 601.

P. 113, line 6.—Where an underlease is granted for a term in excess of what the mesne lessor has power to grant, the under lessee has no right to compensation in respect of the defect of title: see *Besley* v. *Besley*, 9 Ch. D. 103; *Clayton* v. *Leech*, 41 Ch. D. 103, C. A.; unless there is an express agreement for compensation: *Palmer* v. *Johnson*, 13 Q. B. D. 351, C. A.

P. 115, line 32.—As to the effect of disclaimer of a lease by a trustee in bankruptcy where the bankrupt has mortgaged by sub-demise or assignment, see the cases cited *sub tit.* DISCLAIMER, *ante*, p. 127. Disclaimer.

USUAL CLAUSES.

P. 117, line 23.—The rule laid down in *Hodgkinson* v. *Crowe*, that under an agreement for a lease to contain usual clauses the power of re-entry contained in the lease must be limited to non-payment of rent is of general application, and is not affected by the relief from forfeiture provided by s. 14 of the Conveyancing Act, 1881: *Re Anderton and Milner's Contract*, 45 Ch. D. 476; *Re Lander and Bagley's Contract*, [1892] 3 Ch. 41; see also *Reeve* v. *Berridge*, 20 Q. B. D. 523, C. A. Power of re-entry.

P. 117, *ad fin.*—Where in a lease prepared in pursuance of an open contract, the lessor inserted the usual covenant to repair and leave in repair, "damage by fire only excepted," it was held that the lessee was not entitled to add the words "or other casualty": *Crosse* v. *Morgan*, 60 L. T. 703; 37 W. R. 543. Covenant to repair.

P. 119, line 33.—After *Bennett* v. *Womack*, add *Re Lander and Bagley's Contract* (*supra*). Covenant not to assign or underlet.

P. 122, line 23.—A covenant not to assign or part with possession of the premises without the consent of the lessor, such consent not to be unreasonably withheld, was held to be an unusual covenant, and accordingly a purchaser to whom the covenant was not disclosed before signing the agreement to purchase the property was entitled to refuse to complete the purchase and to recover back his deposit: *Bishop* v. *Taylor*, 39 W. R. 542; 64 L. T. 529; 60 L. J., Q. B. 556.

CHAP. III.—DEMISE, RENT, &C., COVENANTS, &C.

Instrument of Demise.

P. 126, line 13.—After *Cowen* v. *Phillips*, add *Fillingham* v. *Wood*, [1891] 1 Ch. 51. Lease not under seal.

Premises.

Recital operating as covenant.

P. 128, line 20.—After *Lay* v. *Mottram*, add *Brooks* v. *Jennings*, L. R., 1 C. P. 476 (composition deed).

Interesse termini.

P. 130, line 21.—The phrase *interesse termini* relates to the interest which the termor has before he has taken possession by force of the lease which has been made to him, and is never used with regard to a freehold lease, per *Chitty*, J., in *Ecclesiastical Commissioners* v. *Treemer*, [1893] 1 Ch. 166 at 171.

A person having an *interesse termini* cannot maintain an action on a covenant for quiet enjoyment, nor for trespass, nor for damages: *Wallis* v. *Hands*, [1893] 2 Ch. 75.

Appurtenances.

P. 130, *ad fin.*—After *Kerslake* v. *White*, add *Thomas* v. *Owen*, 20 Q. B. D. 225, C. A.

Ways.

P. 132, line 2.—Add reference to *Brown* v. *Alabaster*, 37 Ch. D. 490; *Thomas* v. *Owen* (*supra*).

Exceptions and Reservations.

Regrant of sporting rights to landlord.

P. 133, *ad fin.*—Where a lease demised land with full right to the lessee to cut turf, &c., "excepting always and reserving out of this demise" to the lessor timber and minerals, and liberty of entry to cut, work, and carry away the same; "and also by way of grant and not reservation" exclusive sporting rights over the demised premises;" it was held that the sporting rights were re-granted to the lessor: *Houston* v. *Marquis of Sligo*, 55 L. T. 614, H. L.

Timber.

P. 137, line 9.—After *Aubrey* v. *Fisher*, add *Dashwood* v. *Magniac*, [1891] 3 Ch. 306, C. A.

Minerals.

P. 138, line 10.—An exception of minerals will include brick-earth and brick-clay, but not common clay: see *Earl of Jersey* v. *Guardians of Neath*, 22 Q. B. D. 555, C. A.; *Lord Provost, &c., of Glasgow* v. *Farie*, 13 App. Cas. 657; and will also include ironstone and limestone: *Midland Ry. Co.* v. *Robinson*, 15 App. Cas. 19.

P. 138, line 12.—After *Cardigan* v. *Armitage*, add *Duke of Hamilton* v. *Graham*, L. R., 2 Sc. App. 166.

P. 138, *ad fin.*—Where a lease contained a reservation to the lessor of mines and minerals, it was held that a prehistoric boat embedded in the soil and discovered by the lessees in making certain excavations did not pass by the demise, but was the property of the lessor: *Elwes* v. *Brigg Gas Co.*, 33 Ch. D. 562. Prehistoric chattel found below surface.

Habendum.

P. 139, line 13.—If no date for commencement of the term is fixed, there is no demise: *Phelan* v. *Tedcastle*, 15 L. R., Ir. 169, C. A., *White* v. *McMahon*, 18 L. R., Ir. 460. As to agreements for leases, see Vol. III., p. 109, and *ante*, p. 139. Commencement of term.

Rent.

P. 149, line 23.—After *Jones* v. *Green*, add *Lord Elphinstone* v. *Monkland Iron & Coal Co.*, 11 App. Cas. 332, Sc. Penal rents.

P. 154, line 5.—Where an assignee surrenders part of the land, the lessee still remains liable, at any rate, to an apportioned rent: *Baynton* v. *Morgan*, 22 Q. B. D. 74. Apportionment.

P. 159, line 16.—After *Constable* v. *Constable*, add *Lawrence* v. *Lawrence*, 26 Ch. D. 795.

P. 160, *ad fin.*—A landlord having distrained cannot sue for rent so long as he holds the distress unsold: *Lehain* v. *Philpott*, L. R., 10 Ex. 242. Distress.

P. 161, line 29.—As to the amount for which a landlord can distrain in cases coming within the proviso contained in s. 44 of the Agricultural Holdings Act, 1883, see *Ex parte Bull, Re Bew*, 18 Q. B. D. 642.

P. 163, note (*z*).—After *Selby* v. *Greaves*, add *Marshall* v. *Schofield*, 47 L. T. 406, 31 W. R. 134.

P. 167, line 25.—Sect. 42 of the Bankruptcy Act, 1883, must now be read as if "six months'" rent were substituted for "one year's" rent: see Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 28. Sect. 42 does not apply to an order of the Chancery Division for the administration of a deceased Bankruptcy of tenant.

debtor's estate: *Re Fryman's Estate, Fryman* v. *Fryman*, 38 Ch. D. 468.

P. 167, line 28.—After *Ex parte Till*, add *Ex parte Cochrane, Re Mead*, L. R., 20 Eq. 282.

P. 168, line 4.—Add reference to *Ex parte Harrison, Re Peake*, 13 Q. B. D. 753, C. A.

Stat. 11 Geo. II. c. 19.

P. 169, note (*a*).—The stat. 11 Geo. II. c. 19, does not apply as against the grantee of a bill of sale: *Tomlinson* v. *Consolidated Credit, &c., Corporation*, 24 Q. B. D. 135, C. A.

P. 170, line 15.—Where a lessee of land granted sub-leases of parts of the land to two persons at apportioned rents, covenanting with them respectively to pay the rent due to the original lessor and to indemnify, and subsequently became bankrupt, one of the sub-lessees being threatened with distress by the lessor paid the whole rent under the original lease; it was held that he had no right of contribution as against the other sub-lessee: *Johnson* v. *Wild*, 44 Ch. D. 146.

Exemption from distress.

P. 170, *ad fin.*—The Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), exempts from distress "fittings for the gas": it was held that a gas-stove let for hire was within the words "fittings," and was therefore exempt from distress: *Gas Light & Coke Co.* v. *Hardy*, 17 Q. B. D. 619, C. A.

P. 171, line 36.—Things belonging to a third person, which are on demised premises for the purposes of being wrought or worked up by the tenant in the way of his trade or employ, are not privileged from distress, unless they have been delivered by the owner to the tenant for that purpose: *Clarke* v. *Millwall Dock Co.*, 17 Q. B. D. 494, C. A.

P. 174, note (*d*).—As to dogs, see stat. 24 & 25 Vict. c. 96, sect. 18.

P. 174, note (*e*).—See now, as to executions under County Court warrant, County Courts Act, 1888 (51 & 52 Vict. c. 43, Part VII., sects. 146—160). As to a landlord's right to claim for arrears of rent due from his lessee from the bailiff, where execution has been levied on goods of a third party, see *Hughes* v. *Smallwood*, 25 Q. B. D. 306.

P. 176, line 14.—After *Reynolds* v. *Barford*, add *Ex parte Pollen Trustees, Re Davis*, 34 W. R. 442, 54 L. T. 304, 55 L. J. Q. B. 217. What rent recoverable.

P. 176, line 33.—The damages against a sheriff improperly paying over money after notice are *primâ facie* equal to one year's rent and will not necessarily be reduced to the amount realised by the sale of the goods: *Thomas* v. *Mirehouse*, 19 Q. B. D. 563. Remedy against sheriff.

P. 179, line 37.—Where a tenant by agreement in consideration of £2 allowed a person the exclusive right to feed the grass on the land for four weeks, it was held that cattle on the land pursuant to the agreement were not protected from distress by sect. 45 of the Agricultural Holdings Act, 1883: *Masters* v. *Green*, 20 Q. B. D. 807. Agricultural Holdings Act, 1883.

P. 182, *ad fin.*—The Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 4, exempts from distress "any goods or chattels of the tenant or his family which would be protected from seizure in execution under s. 96 of the County Courts Act, 1846 (9 & 10 Vict. c. 95), or any enactment amending or substituted for the same," that is to say, "the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of £5, which shall to that extent be protected from such seizure:" see s. 147 of the County Courts Act, 1888 (51 & 52 Vict. c. 43). But this enactment is not to extend where the interest of the tenant has expired and where possession of the premises has been demanded, and the distress is made not earlier than seven days after such demand. The Law of Distress Act, 1888.

Chapter IV.—Covenants.

Construction of Covenants.

P. 185, line 18.—As to the implied liability of an ultimate assignee of a lease, of which there have been assignments, to indemnify the original lessee in respect of breaches of covenants in the lease: see *Moule* v. *Garrett*, L. R. 7 Ex. 101. Indemnity by assignee.

P. 186, line 32.—A covenant by several persons may be joint, although the demise is made to them as tenants in common: *White* v. *Tyndall*, 13 App. Cas. 263. Covenants, joint or several.

Covenants to Pay Rent, Rates, &c.

Covenant to pay taxes, etc.

P. 189, line 12.—See further as to what will be included in a covenant to pay rates, taxes, and impositions, &c.: *Spanish Telegraph Co.* v. *Shepherd*, 13 Q. B. D. 202; *Badcock* v. *Hunt*, 22 Q. B. D. 145, C. A.

Rates for paving, etc.

P. 192, line 5.—A sum assessed for street paving under the Metropolis Local Management Acts, is a charge imposed upon the owner for the permanent improvement of his property, and is not within a covenant to pay "all rates, taxes, and assessments:" *Wilkinson* v. *Collyer*, 13 Q. B. D. 1. But such a charge is an "outgoing:" see *Aldridge* v. *Ferne*, 17 Q. B. D. 212; *Batchelor* v. *Bigger*, W. N. 1889, p. 52, 60 L. T. 416.

Covenants to Repair.

Covenant to repair.

P. 194, line 6.—Under a covenant to leave a house "in tenantable repair," it was held that the tenant was not liable to paper and paint the house so as to leave it as he took it, but merely to compensate for waste occasioned by his having omitted to paint sufficiently so as to preserve the woodwork, &c., *Crawford* v. *Newton*, 36 W. R. 54, C. A.

As to the meaning of a covenant to keep premises "in good tenantable repair:" see *Proudfoot* v. *Hart*, 25 Q. B. D. 42, C. A. A covenant to keep in repair imposes an obligation to put in repair: *Payne* v. *Haine*, 16 M. & W. 541.

Specific performance of covenants.

P. 198, line 10.—See on the point that the Court will not decree specific performance of covenants requiring supervision which the Court cannot undertake: *Phipps* v. *Jackson*, W. N. 1887, p. 46, 35 W. R. 378, 56 L. J. Ch. 550; *Ryan* v. *Mutual Tontine Westminster Chambers Association*, [1893] 1 Ch. 116, C. A.

Liability of tenant for damage by fire.

P. 200, line 4.—Where a lessee sublet the premises to a turpentine distiller, without the lessor's consent, contrary to a covenant in the lease, and the premises were destroyed by fire, it was held that the lessee was liable for the loss caused by the fire as being the natural result of the breach of covenant: *Lepla* v. *Rogers*, [1893] 1 Q. B. 31.

Covenants in Restraint of Trade.

Covenants in restraint of trade.

P. 202, line 26.—A covenant not to "permit or suffer" any noisome business does not give any remedy to the lessor as against an under-tenant of the premises: see *Hall* v. *Ewin*, 37 Ch. D. 74, C. A.

As to the effect of a covenant not to do any act which may be or grow to the "annoyance" or "grievance" of the lessor, &c., see *Tod-Heatley* v. *Benham*, 40 Ch. D. 80, C. A.

P. 202, line 31.—Keeping a home for working girls is a business, whether any payment is taken or not: *Rolls* v. *Miller*, 27 Ch. D. 71, C. A.

P. 203, line 16.—For 18 Ch. D. read 16 Ch. D.

P. 203, line 20.—A lessee of a theatre who had bought an adjoining piece of ground which was subject to a covenant of which he had notice against carrying on there "the trade of an innkeeper, victualler, or retailer of wines, spirits, or beer," erected on the piece of ground an extension of his theatre, wherein he set up refreshment bars for the accommodation of visitors to the theatre; it was held that this amounted to a breach of the covenant: *Buckle* v. *Fredericks*, 44 Ch. D. 244, C. A.

P. 203, line 24.—A covenant not to carry on a particular trade will be strictly construed, and will not imply a restriction against carrying on part of the trade: *Stuart* v. *Diplock*, 43 Ch. D. 343, C. A.

P. 204, line 3.—After *Keppel* v. *Bailey*, add *Mackenzie* v. *Childers*, 43 Ch. D. 265; *Buckle* v. *Fredericks*, *supra*; *Russell* v. *Watts*, 10 App. Cas. 590.

P. 204, *ad fin.*—Whether covenants to deal with particular persons are binding after assignment and removal of the assignee is a question of construction of the particular agreement: *Clegg* v. *Hands*, 44 Ch. D. 503, C. A.

Covenants not to Assign, &c.

Covenant not to assign or underlet.

P. 209, line 20.—Where a lease contained a power of re-entry if the lessee should not "perform and keep all" the covenants in the lease, it was held that the power of re-entry applied to breach of negative as well as positive covenants, and accordingly to the breach of a covenant against assign-

ment or underletting contained in the lease: *Timms* v. *Baker*, 49 L. T. 106.

P. 211, *ad fin.*—After *Harvey* v. *Oswald*, add *Walrond* v. *Hawkins*, L. R. 10 C. P. 342.

Fine for license to assign.

P. 212, *ad fin.*—By s. 3 of the Conveyancing Act, 1892 (55 & 56 Vict. c. 13), it is provided that no fine is to be exacted for a license to assign or underlet, unless the lease contains an express provision to the contrary; but this is not to preclude the right to require the payment of a reasonable sum for expenses incurred in relation to such license. See this section set out fully, *sub tit.* LICENSES, *post*, p. 162.

Covenants by Lessors.

Covenant for quiet enjoyment.

P. 213, line 13.—As to what amounts to a breach of implied warranty for quiet enjoyment, see *Robinson* v. *Kilvert*, 41 Ch. D. 88, C. A. No covenant for quiet enjoyment is implied in the case of a tenancy from year to year so as to entitle him to damages against his landlord for eviction by title paramount: *Schwartz* v. *Locket*, 61 L. T. 719, 38 W. R. 142; *Kelly* v. *Rogers*, [1892] 1 Q. B. 910, C. A. As to injury to demised mines by overflow of water, see *Harrison, Ainslie & Co.* v. *Lord Muncaster*, [1891] 2 Q. B. 680, C. A.

P. 213, line 18.—Where a landowner contracted to grant leases to a builder, each lease to contain a covenant for quiet enjoyment, and subsequently became insane, *Stirling*, J., made an order under s. 3 of the Trustee Act, 1850 (13 & 14 Vict. c. 60), vesting the terms in the builder, but said that he would not thereby obtain a covenant for quiet enjoyment binding on the lunatic in accordance with the contract: *Cowper* v. *Harmer*, W. N. 1887, p. 186, 57 L. T. 214, 57 L. J. Ch. 460.

P. 215, line 5.—Recent decisions seem to have modified the rule laid down in *Dennet* v. *Atherton*, and to have established that it is a question of fact whether the quiet enjoyment of land has or has not been interrupted, and that it is sufficient to show that the ordinary and lawful enjoyment has been substantially interfered with, although the title to and possession of the land may not be otherwise affected: *Sanderson* v. *Mayor of Berwick on Tweed*, 13 Q. B. D. 547,

C. A.; *Jenkins* v. *Jackson*, 40 Ch. D. 71; *Robinson* v. *Kilvert*, 41 Ch. D. 88, C. A.

Renewable leaseholds.

P. 218, line 21.—After *Brown* v. *Tighe*, add *Swinburne* v. *Milburn*, 9 App. Cas. 844.

P. 219, line 2.—A covenant for renewal in a lease granted under a power to let at the best rent is good, provided the new lease reserves the best rent that can be obtained at the time when such lease is granted: *Gas Light & Coke Co.* v. *Towse*, 35 Ch. D. 519.

Purchase by tenant for life of reversion.

P. 219, line 33.—Where a tenant for life of leaseholds renewable by custom, purchases the freehold reversion, the purchase enures for the benefit of the remainderman: *Phillips* v. *Phillips*, 29 Ch. D. 673, C. A.

Burden and Benefit of Covenants.

Damages for breaches of covenants.

P. 226, line 4.—The measure of the damages in an action under the stat. 32 Hen. VIII., c. 34, is the permanent, not the immediate and temporary injury to the reversion: *Rust* v. *Victoria Graving Dock Co.*, 36 Ch. D. 113, C. A.

P. 226, line 17.—After *Twynam* v. *Pickard*, add *Mayor of Swansea* v. *Thomas*, 10 Q. B. D. 48.

Covenants running with land.

P. 230, line 2.—A covenant by a lessee to conduct a public house so as not to endanger the license has been held to run with the land: *Fleetwood* v. *Hull*, 23 Q. B. D. 35.

P. 230, line 39.—After *Wilson* v. *Hart*, add *Clegg* v. *Hands*, 44 Ch. D. 503, C. A. A covenant by a lessee to pay taxes, tithes, assessments, and outgoings payable by the lessor in respect of property excepted from the lease was held to be a covenant to pay a collateral sum of money and not to run with the land demised: *Gower* v. *Postmaster-General*, 57 L. T. 527.

Covenants running with reversion.

P. 235, note (*m*).—As to covenants in leases giving to lessors rights of way, &c., running with the reversion, see *Lord Dynevor* v. *Tennant*, 13 App. Cas. 279.

Notice.

P. 236, *ad fin.*—As to the doctrine in *Tulk* v. *Moxhay*, add *Earl of Gainsborough* v. *Watcombe Terra Cotta Co.*, W. N. 1885, p. 110; 53 L. T. 116; *Nottingham Patent Brick & Tile Co.* v. *Butler*, 16 Q. B. D. 778, C. A.; *Clegg* v. *Hands*

(3rd point), 44 Ch. D. 503, C. A.; *Mander* v. *Falcke*, [1891] 2 Ch. 554, C. A.; and see the doctrine discussed *sub tit.* PURCHASE DEEDS, Vol. V., pp. 288 *et seq.*

Liability of executor.

P. 240, line 25.—The liability of an executor who takes possession of leaseholds is the same as if he were an assign of the lease: *Re Bowes, Strathmore* v. *Vane*, 37 Ch. D. 128.

P. 241, line 38.—Add reference to *Re Bowes* (*supra*).

Dependent and Independent Covenants.

Set off.

P. 245, *ad fin.*—After *Brook* v. *Biggs*, add *Underhay* v. *Read*, 20 Q. B. D. 209, C. A.

Pp. 247, 248.—The law with regard to the liability to pay tithe rent-charge is now altered by the Tithe Act, 1891 (54 Vict. c. 8), which enacts as follows:—

Liability of owner to pay tithe rent-charge, and modification of contracts with tenants.

Sect. 1.—(1.) Tithe rentcharge as defined by this Act issuing out of any lands shall be payable by the owner of the lands, notwithstanding any contract between him and the occupier of such lands, and any contract made between an occupier and owner of lands, after the passing of this Act, for the payment of the tithe rentcharge by the occupier shall be void.

(2.) Where the occupier is liable under any contract made before the passing of this Act to pay the tithe rentcharge, then he shall cease to be bound by that part of his contract, but he shall be liable to pay to the owner such sum as the owner has properly paid on account of the tithe rentcharge which such occupier is liable under his said contract to pay, exclusive of any costs incurred or paid by the owner in respect of such tithe rentcharge, and every receipt given for such sum shall state expressly that the sum is paid in respect of that tithe rentcharge; Provided that where the lands, out of which any tithe rentcharge issues, are occupied by several occupiers who have contracted to pay the tithe rentcharge, any of such occupiers shall be liable only to pay such proportion of the sum paid by the owner of the lands on account of that tithe rentcharge as the rateable value of the lands occupied by him bears to the rateable value of the whole of the lands occupied by such occupiers.

(3.) Such sum shall be recoverable from the occupiers by distress in like manner as is provided by sections eighty-one and eighty-five of the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter seventy-one, and the enactments amending those sections, and not otherwise.

See as to deductions by tenants under the old law, *Dawes* v. *Thomas*, [1892] 1 Q. B. 414, C. A.

Chapter V.—Re-entry.

Conditions of Re-entry.

Negative covenant.

P. 250, *ad fin.*—A power of re-entry may by apt words be made to apply to breaches of a negative covenant: *Wadham* v. *Postmaster-General*, L. R. 6 Q. B. 644; see also *Timms* v. *Baker*, 49 L. T. 106.

Waiver of forfeiture.

P. 253, line 13.—As to waiver of forfeiture by acceptance of rent, add *Pennant's Case*, 3 Rep. 64 *a*; *Croft* v. *Lumley*, 6 H. L. C. 672; *Davenport* v. *The Queen*, 3 App. Cas. 115.

Relief from Forfeiture.

Conv. Act, 1881, s. 14.

P. 258, line 26.—The following points have been recently decided as to the effect of s. 14 of the Conveyancing Act, 1881:—

Agreement for lease.

The section did not apply to an agreement for a lease not under seal: *Ayling* v. *Mercer*, W. N. 1885, p. 166, C. A.; *Coatsworth* v. *Johnson*, 54 L. T. 520, C. A.; at all events unless there was a present title to specific performance: *Swain* v. *Ayres*, 21 Q. B. D. 289, 292, C. A.; *Strong* v. *Stringer*, W. N. 1889, p. 135, 61 L. T. 470. See now Conveyancing Act, 1892, s. 5, stated *infra*.

Under-lease of part of premises.

An under-lessee of part of property comprised in a lease was held not to be entitled to the benefit of this section as against the superior landlord in respect of breach of a covenant contained in the head-lease: *Cresswell* v. *Davidson*, W. N. 1887, p. 87, 56 L. T. 511; *Burt* v. *Gray*, [1891] 2 Q. B. 98. But see s. 4 of the Act of 1892, *infra*.

Notice.

A notice under this section requiring a lessee to remedy a breach of covenant may be good though it does not demand compensation for the breach: *Lock* v. *Pearce*, [1893] 2 Ch. 271, C. A.

Measure of compensation.

The "compensation" for which a lessee is liable under the section is measured by the breach, where it has not been made good, and it was held not to render payable by him as compensation costs of a solicitor and surveyor employed by the lessor in respect of the preparation of the required notice: *Skinners Co.* v. *Knight*, [1891] 2 Q. B. 542, C. A. But this rule has been held not to apply when relief is claimed and

granted under sub-s. (2) of the section: *Bridge* v. *Quick*, 67 L. T. 54. See now Conveyancing Act, 1892, s. 2, stated *infra*.

A lessee cannot apply for relief under this section after the lessor has actually re-entered: *Rogers* v. *Rice*, [1892] 2 Ch. 170.

By the Conveyancing Act, 1892 (55 & 56 Vict. c. 13), it is enacted as follows:—

Costs of waiver and forfeiture in case of bankruptcy or execution.

Sect. 2.—(1.) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any) all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor by writing under his hand, or from which the lessee is relieved, under the provisions of the Conveyancing and Law of Property Act, 1881, or of this Act.

(2.) Sub-section six of section fourteen of the Conveyancing and Law of Property Act, 1881, is to apply to a condition for forfeiture on bankruptcy of the lessee, or on taking in execution of the lessee's interest only after the expiration of one year from the date of the bankruptcy, or taking in execution, and provided the lessee's interest be not sold within such one year, but in case the lessee's interest be sold within such one year, sub-section six shall cease to be applicable thereto.

(3.) Sub-section two of this section is not to apply to any lease of—

(*a.*) Agricultural or pastoral land;

(*b.*) Mines or minerals;

(*c.*) A house used or intended to be used as a public-house or beershop;

(*d.*) A house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures;

(*e.*) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property or on the ground of neighbourhood to the lessor, or to any person holding under him.

Power of Court to protect under-lessees on forfeiture of superior leases.

Sect. 4. Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole

term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the Court in the circumstances of each case shall think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

Extension of definitions of "lease," "under-lease," and "under-lessee."

Sect. 5. In section fourteen of the Conveyancing and Law of Property Act, 1881, as amended by this Act, and in this Act, "lease" shall also include an agreement for a lease where the lessee has become entitled to have his lease granted, and "under-lease" shall also include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted, and in this Act "under-lessee" shall include any person deriving title under or from an under-lessee.

Chapter VII.—Tenancies from Year to Year.

Parol demise by corporation.

P. 269, line 32.—As to what part performance is sufficient to create a tenancy under an agreement to let made by a corporation not under seal: see *Mayor of Kidderminster* v. *Hardwick*, L. R. 9 Ex. 13.

Time of notice to quit.

P. 287, line 12.—The decision in *Barlow* v. *Teal* was affirmed, 15 Q. B. D. 501, C. A.

Chapter VIII.—Surrenders.

Liability to apportioned rent after surrender.

P. 296, line 14.—Where a lessee assigned the term, and his assignee surrendered part of the premises to the lessor, it was held that the original lessee remained liable under his covenant to pay the rent reserved by the lease to the amount of the rent apportioned in respect of the unsurrendered part of the premises: *Baynton* v. *Morgan*, 22 Q. B. D. 74, C. A.

Right to recover rent due.

P. 297, line 30.—A surrender by operation of law does not extinguish the right to recover rent due under a parol demise, but such rent may be enforced by an action for use and occupation under the stat. 11 Geo. II. c. 19, s. 14: *Shaw* v. *Lomas*, 59 L. T. 477.

Substitution of new tenant.

P. 297, line 36.—The existing tenant must give up possession to the new tenant at or about the time of the grant

of the new lease, in order that there may be a surrender by operation of law of the old tenancy; mere oral assent by the old tenant to the grant of the new lease is not sufficient: *Wallis* v. *Hands*, [1893] 2 Ch. 75.

Effect of surrender upon under-leases.

P. 300, line 22.—The effect of s. 6 of the stat. 4 Geo. II., c. 28, is to protect the chief landlord from being barred by the Statutes of Limitation by a trespasser who comes into the property after the expiration of a sub-lease granted before the original lease was surrendered and renewed; *Ecclesiastical Commissioners* v. *Treemer*, [1893] 1 Ch. 166.

Rights of third parties.

P. 300, *ad fin.*—After *Saint* v. *Pilley*, add *Clements* v. *Matthews*, 11 Q. B. D. 808, 819; see also *David* v. *Sabin*, [1893] 1 Ch. 523, C. A.

Chapter IX.—Determination of Lease by Notice.

Notice to equitable tenant for life.

P. 302, line 27.—An equitable tenant for life not being a lessor cannot accept a notice from the lessee so as to determine the lease under s. 7 of the Settled Estates Act, 1877, without the sanction of the Court: *Easton* v. *Penny*, 67 L. T. 290; 41 W. R. 72.

Requisites for notice.

P. 302, line 29.—After *Doe* v. *Jackson*, add *Gardner* v. *Ingram*, 61 L. T. 729.

Chapter X.—Expiration of Tenancy.

Forcible entry by landlord.

Pp. 306 to 308.—A tenant wrongfully refusing to give up possession cannot maintain an action for trespass and injury to furniture, &c., unavoidably damaged by forcible entry of a landlord who has obtained a possession warrant under the stat. 1 & 2 Vict. c. 74, s. 1: *Jones* v. *Foley*, [1891] 1 Q. B. 730.

Erratum.

P. 311, line 20.—For *Cleves* v. *Mawe* read *Elwes* v. *Mawe*.

Fixtures.

P. 311, line 25.—After *Avery* v. *Cheslyn*, add *Ward* v. *Countess of Dudley*, 57 L. T. 20.

P. 312, line 5.—After *Martyr* v. *Bradley*, add *Cosby* v. *Shaw*, 23 L. R. Ir. 181, C. A., where it was held that a like covenant precluded the lessees from removing such fixtures and machinery as were essential to or were included in the

subject matter of the demise either originally or by substitution, but did not bind trade fixtures, &c., which had been introduced as scientific improvements, to save manual labour.

Tenant's right to remove fixtures.

P. 319, line 7.—It would seem that no property in tenant's fixtures vests in the landlord until the determination of the term: see *Cumberland Union Banking Co.* v. *Maryport Hematite Iron & Steel Co.* [1892] 1 Ch. 415.

Compensation for improvements.

P. 333, line 20.—As to the meaning of "a determination of a tenancy" in the Agricultural Holdings Act, 1883, see *Re Paul, Ex parte Earl of Portarlington*, 24 Q. B. D. 247.

Where an agricultural lease contained a covenant by the lessee to cultivate "in a husbandlike manner," and the lessee converted part of the demised land into a market garden, and erected hothouses, &c., thereon, it was held, by *Kekewich*, J., that the conversion did not constitute a breach of the covenant: *Meux* v. *Cobley*, [1892] 2 Ch. 253. His lordship in that case (at p. 264), expressed his opinion that the Agricultural Holdings (England) Act, 1883, goes a long way towards getting rid of some of the old Common Law doctrines of waste, and that the erection of hothouses, &c., on agricultural land are "improvements" within the meaning of the Act, for which a tenant can claim compensation, if made with his landlord's consent.

Charge of compensation.

By the Tenant's Compensation Act, 1890 (53 & 54 Vict. c. 57), where compensation is charged by an order under s. 31 of the Act of 1883, the charge is a "land charge" within the meaning of the Lands Charges, &c., Act, 1888, and must be registered accordingly; see *ante*, pp. 10, *et seq.*

Chapter XI.—Stamps.

Stamps.

Pp. 336 to 340.—As to the duties now payable in respect of leases, see *post*, *sub tit.* Stamps.

PRECEDENTS AND NOTES THERETO.

Precedent I.—Farming Agreement.

P. 341, note (*d*).—As to tithe rent-charge see now the Tithe Act, 1891 (54 Vict. c. 8), s. 1, set out *ante*, p. 150.

Precedent II.—Farming Agreement.

P. 347, line 30.—The words "all tithe rentcharge" in clause 10 must now be omitted, *vide supra*. So also at p. 359, line 29; p. 366, line 7; p. 370, line 4.

Precedent VIII.—Farming Lease with Option to Purchase.

Proviso giving option to purchase strictly construed.

P. 385, note (*l*).—After *Lord Ranelagh* v. *Melton*, add *Riddell* v. *Durnford*, W. N., 1893, p. 30, which, however, turned upon the construction of the particular clause. Where a lease granted by trustees of a will provided that notice of the lessee's desire to exercise his option of purchase should be given to the lessors without saying "or any of them," it was held that notice given to one only of the trustees was bad: *Sutcliffe* v. *Wardle*, W. N., 1890, p. 157, 63 L. T. 329.

Precedent X.—Building Agreement.

Tenure of lessee on completion of works.

P. 389, note (*r*).—Upon completion by a builder of the works stipulated in an agreement for a lease he becomes entitled to specific performance of the agreement, and he thenceforth holds not on the terms of the building agreement, but on the terms of the lease as if it had been actually granted: *Lowther* v. *Heaver*, 41 Ch. D. 248, 264, C. A. See also *Strong* v. *Stringer*, W. N., 1889, p. 135, 61 L. T. 470.

Power to seize plant, etc.

P. 392, note (*t*).—The reference to "*tit.* Mortgages," in this place is to Vol. III., pp. 795, *et seq.* See also cases cited, *post*, p. 177.

Precedent XIX.—Furnished House.

Warranty of fitness for habitation.

P. 429, note (*r*).—The principle that a house let furnished for temporary occupation is at the commencement of the tenancy in all respects reasonably fit for human habitation does not apply to an unfurnished house, or apparently to a house let partly furnished for a term of years: *Chester* v. *Powell*, W. N., 1885, p. 67, 52 L. T. 722.

Precedent XXIV.—House and Workshops.

Apportionment of rent.

P. 444, line 1.—After "less time than a year," add "such proportional sum become due and to be paid immediately on the determination of the term," or insert the full apportionment clause given Vol. III., p. 447. See *Re United Club & Hotel Co.*, W. N., 1889, p. 67, 60 L. T. 665, where it was held that the Apportionment Act, 1870, does not render "due" on the determination of the term, the rent for the expired portion of the current quarter.

Proviso for re-entry.

P. 445, line 19.—Provisoes for re-entry should always commence "Provided always that if *and whenever*," &c., see *Shepherd* v. *Berger*, [1891] 1 Q. B. 597, C. A.

Precedent XXV.—Unfinished House to Builder's Nominee.

Option to purchase.

P. 451, line 2.—It may often be advisable in leases giving an option to the lessee to purchase the fee to add the following proviso :—

"Provided always that if the lessee shall exercise the option of purchase hereinbefore given to him, the conveyance [*or* several conveyances] to him shall be executed by him in counterpart or duplicate, and shall contain covenants on the part of the purchaser to be so framed as to be binding so far as may be on him and on all persons claiming under him, and so as to protect, as far as may be, the adjoining estates of the vendor whether in the possession of himself or of any person or persons claiming under him, as follows, that is to say [*specify restrictive covenants, e.g., to contribute towards party walls, &c., not to use the premises as a shop, nor obstruct lights*], and shall also contain also such other provisions as may be reasonably required for securing and enforcing the performance and observance of such covenants." See further as to option to purchase, Vol. III., p. 385, and *ante*, p. 156.

A proviso giving to the lessee an option to purchase the fee may now be inserted in a building lease by a tenant for life of settled lands under his statutory powers: see Sect. 2 of the Settled Land Act, 1889 (52 & 53 Vict. c. 36). See *sub tit.* Settlements, Vol. VI., p. 706, *n.*

Precedent XXVII.—Lease by Tenant for Life in Consideration of Fine.

Fine or premium.

Pp. 455 to 458.—Of course the trustees are here made parties only because a fine or premium forms part of the consideration for the lease. Where no fine or premium is taken the concurrence of the trustees or any reference to them will be unnecessary.

Precedent XXIX.—Residential Chambers.

P. 464, last line, and P. 465.—The lessor of residential chambers generally himself holds under a superior lease; if, however, he is a freeholder the interpretation clause should run as follows:—

Interpretation clause.

"Provided lastly that the heirs, executors, administrators, of the lessor, and the executors, administrators, and assigns of the lessee shall be respectively bound, &c., in like manner as if the words 'heirs, executors, administrators, and assigns,' and the words 'executors, administrators, and assigns' were inserted next after the words 'lessor' and 'lessee' respectively throughout, so far, &c."

Precedent XXXI.—Public-House.

Publican's license.

P. 469, line 7.—In consequence of the state of the law as declared by the House of Lords in *Sharp* v. *Wakefield*, [1891] A. C. 173, a publican's tenure of his license has been rendered very precarious, inasmuch as its renewal may be refused on grounds other than misconduct on his part, as alone contemplated by this and the next following precedents. Some insurance societies now grant policies against loss of licenses, and it may be prudent in granting a lease of a public-house to make the lessee covenant that he will effect such insurance. Forms of covenants by tenants for effecting and keeping up policies of fire insurance will found in Vol. III., pp. 352, 373, 400, one or other of which may be adopted.

Some further modifications in these precedents, so far as regards the licensing clauses, might perhaps be advisable, but

it has not been thought well to suggest any such at the present moment as it is impossible to foresee what changes may be effected in the licensing law by impending legislation.

Precedent XXXVI.—Mining Lease.

Flow of water.

P. 489, note (*t*).—As to rights in flow of water see further, *sub tit.* Purchase Deeds, Vol. V. pp. 549, *et seq.*, where this subject is fully discussed.

Exclusive license.

P. 492, note (*y*).—After *Carr* v. *Benson*, add *Duke of Sutherland* v. *Heathcote*, [1892] 1 Ch. 475, C. A., where it was held that though, when the grant of a license to work minerals is not expressly exclusive, there is a strong presumption that the license is non-exclusive, the intention to exclude the grantor need not appear by express words.

Trespass.

P. 493, note (*y*).—After *Martin* v. *Porter*, add *Dreyfus* v. *Peruvian Guano Co.*, 42 Ch. D. 66 at p. 76, affirmed 43 Ch. D. 316.

Injury to mine.

P. 497, note (*y*).—After *Raine* v. *Alderson*, add *Knowles* v. *Lancashire & Yorkshire Rail. Co.*, 14 App. Cas. 248.

After *Clavering* v. *Clavering*, add *Re Barrington, Gamlen* v. *Lyon*, 33 Ch. D. 523, where a tenant for life without impeachment of waste was held to be absolutely entitled to compensation moneys for coals won from mines forming part of the settled estates by innocent trespassers.

Precedent XLII.—Lease of Quarry.

Erratum.

P. 573, line 14.—At the beginning of clause 7, for "lessee" read "lessor," and for "lessor" read "lessee."

Precedent XLIV.—Lease by Mortgagees and Mortgagor.

Quiet enjoyment.

P. 587, line 3.—It would appear that in strictness mortgagees cannot be required to enter into a covenant for quiet enjoyment or into any covenant except that they have not

incumbered: see *Worley* v. *Frampton*, 5 Hare, 560. If therefore the lessor-mortgagees refuse to give a covenant for quiet enjoyment insert here after the word "demise" the words "but not so as to imply any warrant or covenant," and omit from line 12 the words "each of the lessors respectively and."

Precedent XLVI.—Underlease.

Fire insurance.

P. 595, note (*y*).—The rule or practice now generally adopted appears to be that in long leases the lessee is required to insure in the lessor's name, though frequently, in leases for 21 years or under, the lessor insures and the lessee pays the premiums as additional rent; in short occupation leases or tenancies the landlord insures at his own cost, and sometimes agrees to a suspension or abatement of rent in case the premises are destroyed by fire until they are reinstated.

Distress.

P. 598, note (*d*).—As to concurrent exercise of common law and express rights of distress, see *Re River Swale Brick & Tile Co.*, 48 L. T. 778, 32 W. R. 202. See the question as to how far express powers of distress are affected by the Bills of Sale Acts, *sub tit.* Mortgages, Vol. III., pp. 801, 983, and *sub tit.* Purchase Deeds, Vol. V., p. 635, *n.*

Precedent L.—Lease by Reference to Expired Lease.

Stamp.

P. 611, note (*o*).—The statement in this note that the lease referred to will also require a stamp of 10*s.*, as a schedule can hardly be supported in the face of the decision in *Strutt* v. *Robinson*, 3 B. & Ad. 395, cited *sub tit.* Stamps, Vol. VII., p. 98, where the subject of stamps on schedules under the Stamp Act, 1870, is fully discussed. The Stamp Act, 1891, does not impose any duty on schedules.

LICENCES.

PRELIMINARY DISSERTATION.

Easement.

P. 619, line 5.—In *McManus* v. *Cooke*, 35 Ch. D. 681, it was held that a parol agreement, followed by part-performance, to build in a particular way, gave to each party an easement of light over the other's land.

Licence amounting to demise.

P. 619, line 35.—*Lancashire, &c., Co.* v. *Overseers of Manchester* was affirmed on appeal, 14 Q. B. D. 267. Add references to *Conservators of Thames* v. *Commissioners of Inland Revenue*, 18 Q. B. D. 279; *Taylor* v. *Overseers of Pendleton*, 19 Q. B. D. 288.

Nature of exclusive licence.

P. 260, line 3.—"The true nature of an exclusive licence is this. It is a leave to do a thing, and a contract not to give leave to anybody else to do the same thing. But it confers, like any other licence, no interest or property in the thing. A licence may be, and often is, coupled with a grant, and that grant conveys an interest in property, but, the licence pure and simple, and by itself, never conveys an interest in property. It only enables a person to do lawfully what he would not otherwise do, except unlawfully." Per *Fry*, L. J., in *Heap* v. *Hartley*, 42 Ch. D. 461 (at p. 470), where it was held that the exclusive licensee of a patent could not sue for infringement in his own name. See also per *Vaughan Williams*, J., in *London Printing, &c. Alliance* v. *Cox*, [1891] 3 Ch. 291, 297.

P. 620, line 36.—After *Carr* v. *Benson*, add *Duke of Sutherland* v. *Heathcote*, [1892] 1 Ch. 475, C. A. (*ante*, p. 159), where *Mountjoy's Case* and *Chetham* v. *Williamson* are observed upon.

Revocation.

P. 622, line 13.—After *Salter* v. *Woollams*, add *Plimmer* v. *Mayor, &c., of Wellington*, 9 App. Cas. 699, P. C.

Statute of Frauds.

P. 623, line 9.—Add reference to *tit.* AGREEMENTS, Vol. I., pp. 278 *et seq.*, and see *ante*, p. 29.

PRECEDENT AND NOTES THERETO.

Precedent VI.—Licence to Underlet.

Licence to assign or underlet.

P. 630, note (*j*).—After *Williamson* v. *Williamson*, add *Haywood* v. *Silber*, 30 Ch. D. 404, C. A., where it was held upon the construction of an agreement for an underlease that the mesne lessor was entitled to the insertion in the underlease of a covenant by the underlessee not to assign or sublet without the licence of the superior landlord.

As to licences to assign and underlet, the Conveyancing Act, 1892, s. 3, enacts as follows:

No fine to be exacted for licence to assign.

"In all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent."

Precedent VII.—Licence to Carry on Business.

Nuisance.

P. 632, note (*n*).—After *White* v. *Jameson*, add *Jenkins* v. *Jackson*, 40 Ch. D. 71.

MORTGAGES.

PRELIMINARY DISSERTATION.

Lien.

Factor's lien.

P. 643, line 4.—After *Cowell* v. *Simpson*, add *Re Hermann Loog*, W. N. 1887, 180, 191, C. A., and see also s. 12 of the Factors Act, 1889 (52 & 53 Vict. c. 45), where this right is expressly recognized.

Banker's lien.

P. 643, line 17.—The general lien of a banker may be displaced by deposit of documents by way of security with a memorandum expressly limiting the security to a specified amount: *Re Bowes, Earl of Strathmore* v. *Vane*, 33 Ch. D. 586; or by implication from circumstances that the charge was intended to be so limited: *Wolstenholm* v. *Sheffield Union Banking Co.*, 54 L. T. 746, C. A.

Solicitor's lien

P. 646, line 35.—The solicitor of a mortgagee has no right to retain deeds as against the mortgagor, who has paid to the mortgagee his principal interest and costs, for costs due to the solicitor for work done in relation to the mortgaged property: *Re Llewellin*, [1891] 3 Ch. 145.

P. 647, line 8.—The mere fact that a solicitor acts in the matter of a mortgage for the mortgagor as well as for the mortgagee will not of itself deprive of its priority a charge under the Attorneys and Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28, for acts not arising out of that particular transaction: *Macfarlane* v. *Lister*, 37 Ch. D. 88, C. A. See also *Brunton* v. *Electrical Engineering Corporation*, [1892] 1 Ch. 434.

P. 648, line 3.—Where the solicitors of the defendant in an action after notice of the lien of the plaintiff's solicitors paid money to the plaintiff under a compromise entered into without the knowledge of his solicitors, it was held that the

defendant's solicitors were liable to satisfy the lien: *Ross* v. *Buxton*, 42 Ch. D. 190.

P. 648, line 11.—After *Wickens* v. *Townshend*, add *Re Birt*, *Birt* v. *Burt*, 22 Ch. D. 604, and compare *Re Jones*, *Calver* v. *Laxton*, 31 Ch. D. 440.

P. 650, line 10.—The power to order solicitors to deliver their bills for taxation is now exercisable by the Court or a judge in any Division of the High Court: *Re Pollard*, 20 Q. B. D. 656, C. A.

Erratum. **P. 652, line 15.**—For "refuse" read "enforce."

Lands Clauses Act. **P. 652, line 18.**—Where it appears that lands compulsorily taken by a railway company are unsaleable, the Court will enforce the unpaid vendor's lien by an injunction restraining the company from running trains over the railway and from continuing in possession of the land: *Allgood* v. *Merrybent & Darlington Rail. Co.*, 33 Ch. D. 571.

Legatees. **P. 655, line 22.**—After *Sproule* v. *Prior*, add *Webb* v. *Smith*, 30 Ch. D. 192, C. A.

Deeds. **P. 656, line 19.**—See further as to the omission of a mortgagee to possess himself of the title deeds, Vol. III., pp. 955, *et seq.*, and *post*.

Judgments.

Equitable execution. **P. 665, line 16.**—Although since the Judicature Acts the suing out of an elegit is no longer a necessary preliminary to proceedings in equity (see *Ex parte Evans*, *Re Watkins*, 13 Ch. D. 252, C. A.), the Court will not grant relief by way of equitable execution unless some hindrance is shown which prevents execution at common law, nor unless all the proper parties are before the Court: *Re Shephard*, *Atkins* v. *Shephard*, 43 Ch. D. 131, C. A. See also *Re Nixon*, W. N. 1886, p. 191.

Searches. **P. 669**, *ad fin.*—As to searches, see the Land Charges, &c., Act, 1888, stated and discussed *ante*, pp. 10, *et seq.*

Fund in Court. **P. 670, line 9.**—Cash in Court standing to the credit of a debtor in the name of the Paymaster-General is within s. 12 of the stat. 1 & 2 Vict. c. 110: *Brereton* v. *Edwards*, 21 Q. B. D. 488, C. A.

Crown Debts.

P. 678, line 28.—The provisions of ss. 30 and 150 of the Bankruptcy Act, 1883, take away the priority of the Crown over other creditors in the distribution of assets in bankruptcy; but these provisions are not imported by virtue of s. 10 of the Judicature Act, 1875 (38 & 39 Vict. c. 77), into the Companies Act, 1862 (25 & 26 Vict. c. 89), so as to bar the prerogative right of the Crown to issue legal process and so to obtain payment in full in priority over the other creditors in the winding up of the company: *Re Oriental Bank Corporation, Ex parte the Crown*, 28 Ch. D. 643. The Companies (Winding up) Act, 1890 (53 & 54 Vict. c. 63), appears to contain no provision affecting the law in this respect. Bankruptcy as against the Crown.

P. 678, line 29.—The Yorkshire Registry Acts here referred to are repealed by the Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54). See as to the Registry Acts generally *sub tit.* REGISTRY, Vol. VI., pp. 1, *et seq.*, and *post.* Registry Act.

Mortgages and their Varieties.

P. 683, line 6.—As to how far a stipulation on the occasion of a mortgage that the mortgagor shall pay to the mortgagee a sum of money by way of bonus or commission is legal, see *James* v. *Kerr*, 40 Ch. D. 449; *Mainland* v. *Upjohn*, 41 Ch. D. 126. Agreement for bonus.

P. 688, line 3.—For "observed" read "ordered." *Errata.*

P. 692, line 24.—For "4 Ves." read "11 Ves."

P. 693, line 3.—After *Wortley* v. *Birkhead*, add *Atherley* v. *Barnett*, W. N. 1885, p. 70, 52 L. T. 736, 33 W. R. 779. Tacking.

P. 694, line 5.—After *Herman* v. *Hedges*, add *Parish* v. *Poole*, 53 L. T. 35, in which case the agreement had been fully carried out, but *North*, J., held, that had the case been otherwise the plaintiff would under the circumstances have been entitled to have the charge agreed upon carried into effect. Specific performance of agreement for advance.

P. 695, line 11.—Whether an assignment or an agreement to assign all future property whatsoever of a debtor by way of security for a loan can be enforced does not appear to have Agreement to assign future property by way of security.

been as yet decided; but an assignment of all moneys to which the debtor might during the continuance of the security become entitled under any will is good, as any legacies would become capable of being identified when the Court is asked to enforce the contract: *Re Clarke, Coombe* v. *Carter*, 36 Ch. D. 348, C. A. See also *Tailby* v. *Official Receiver*, 13 App Cas. 523, where an assignment of all future book debts was upheld.

Deposit of deeds.

P. 695, line 30.—After *Ex parte Wright*, add *Re Macmahon, Macmahon* v. *Macmahon*, 55 L. T. 763.

P. 698, line 6.—Where a person entitled to a reversionary interest in a share of a farm was indebted to his bankers, and in consideration of forbearance promised verbally to give them security; on the death of the tenant for life the title deeds came into the possession of the debtor's brother, who was manager of the bank, for a purpose not connected with the agreed security; the brother subsequently told the debtor that he had the deeds and held the debtor's share for the bank, and the debtor verbally assented, but no memorandum of deposit was made: it was held that there was no such part-performance of the verbal promise to take the case out of the Statute of Frauds, and that, accordingly, the bank had not a valid equitable mortgage on the debtor's share: *Ex parte Broderick, Re Beetham*, 18 Q. B. D. 766, C. A.

P. 701, line 10.—After *Chissum* v. *Dewes*, add *Pile* v. *Pile, Ex parte Lambton*, 3 Ch. D. 36, C. A.

Infants.

P. 707, line 33.—Add reference to *Mellor* v. *Porter*, 25 Ch. D. 158.

Mortgages under Charges and Powers.

Charge of debts.

P. 713, line 12.—After *Spalding* v. *Shalmer*, add *Corser* v. *Cartwright*, L. R., 7 H. L. 731.

Statute of Limitations.

P. 714, line 16.—After *Piggott* v. *Jeffreson*, add *Re Stephens, Warburton* v. *Stephens*, 43 Ch. D. 39.

P. 714, line 21.—After *Williamson* v. *Naylor*, add *Re Hepburn, Ex parte Smith*, 14 Q. B. D. 394.

Extent of charge.

P. 715, line 14.—After *Ball* v. *Harris*, add *Re Jones, Dutton* v. *Brookfield*, W. N. 1889, p. 176, 38 W. R. 90. In *Redman* v. *Rymer*, 65 L. T. 270, a mortgage by executors was, upon

the construction of the will, held to rank in priority over a legacy charged on the testator's estate.

Power of executors.

P. 717, line 30.—As to the powers of executors to mortgage real estate under s. 16 of Lord St. Leonard's Act, see *Re Wilson, Pennington* v. *Payne*, 54 L. T. 600, 34 W. R. 512.

"Rents and profits."

P. 719, line 22.—After *Playters* v. *Abbot* add *Re Green, Baldock* v. *Green*, 40 Ch. D. 610.

Portions, when raisable.

P. 721, line 7.—The implication that a power of maintenance annexed to a power to appoint portions, shows an intention that the portions shall not be raised during the infancy of the objects of the power, may of course be rebutted by expressions in the will: *Henty* v. *Wrey*, 21 Ch. D. 332, C. A.

Collateral power.

P. 722, line 33.—After *Godsall* v. *Webb*, add *Shirley* v. *Fisher*, 47 L. T. 109; *Re Radcliffe, Radcliffe* v. *Bewes*, [1892] 1 Ch. 227, C. A.

Effect of bankruptcy on powers.

P. 727, line 3.—In *Re Jakeman's Trusts*, 23 Ch. D. 344, it was held that a husband was not precluded by his bankruptcy from concurring with his wife in a mortgage by deed duly acknowledged by her under the Fines and Recoveries Act. So also a power of a tenant for life to consent to a power of advancement given to trustees, and exercisable only with such consent, was not extinguished by his bankruptcy: *Re Cooper, Cooper* v. *Slight*, 27 Ch. D. 565.

Solicitor's costs.

P. 730, line 21.—A solicitor may properly receive his costs out of a trust estate although he is aware that a breach of trust has been committed by the trustees: *Re Blundell, Blundell* v. *Blundell*, 40 Ch. D. 370.

Testator's goods not taken in execution for executor's debt.

P. 731, line 4.—After *Gaskell* v. *Marshall*, add *Re Morgan, Pillgrem* v. *Pillgrem*, 18 Ch. D. 93, C. A., where the testator's assets in a business carried on by an executor in accordance with the terms of the will were protected from an execution for the executor's debt.

Mortgages by Tenants in Tail.

Base fee.

P. 731, line 13.—After *Goodright* v. *Mead*, add *Hankey* v. *Martin*, 49 L. T. 560.

P. 731, line 23.—After *Att.-Gen.* v. *Day*, add *Bankes* v. *Small*, 36 Ch. D. 716, C. A.

Preservation of original estates on re-conveyance.

P. 733, *ad fin.*—As to what expressions in the proviso for redemption in a mortgage deed will be deemed to indicate an intention to preserve the estate tail and the remainders thereon, see *Plomley* v. *Felton*, 14 App. Cas. 61, P. C. Compare *Re Byron's Settlement*, *Williams* v. *Mitchell*, [1891] 3 Ch. 474.

Board of Agriculture.

P. 736, note (*l*).—For "Land Commissioners," read "Board of Agriculture," see the stat. 52 & 53 Vict. c. 30.

Mortgages under Acts of Parliament.

Repeal.

P. 742, note (*n*).—The stat. 14 & 15 Vict. c. 53 (except s. 9), is repealed by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 13.

Mortgage of tolls whether within Mortmain Act.

P. 747, line 11.—The decision in *Knapp* v. *Williams* was questioned by the Court of Appeal in *Re Christmas, Martin* v. *Lacon*, 33 Ch. D. 332, C. A., where it was decided that certain bonds given by Harbour Commissioners in the form prescribed by their special act assigning duties levied on ships did not pass an interest in land. But in *Re David, Buckley* v. *Royal National Lifeboat Institution*, 43 Ch. D. 27, C. A., it was held that the bonds given by Harbour Trustees in that case were specific mortgages of certain tolls paid for passing over bridges on the land of the trustees and were impure personalty within the Mortmain Acts. "The cases of *Knapp* v. *Williams* and *Re Christmas* have drawn and affirmed a distinction between two kinds of tolls, the one which is not connected with the land so as to make it an incorporeal hereditament, the other which is so connected with the land as to make it such." Per *Fry*, L. J., *ib.*, at p. 37. As regards testamentary "assurances" of such property, the distinction is now immaterial: see the Mortmain and Charitable Uses Act, 1891, set out and considered *sub tit.* Mortmain, *post*, pp. 216, *et seq.*

Mortgages of Pensions, Salaries, &c.

Naval officer.

P. 755, line 17.—The rule that an officer's pay cannot be assigned applies to naval as well as military officers, and pay

cannot be attached for costs: *Apthorpe* v. *Apthorpe*, 12 P. D. 192, C. A.

Erratum.

P. 755, line 18.—The reference to the statutory enactment now in force prohibiting assignment of wages of seamen in Her Majesty's service should be to the stat. 28 & 29 Vict. c. 73, s. 5.

Execution.

P. 755, line 29.—The pension of an officer in the army is by the stat. 44 & 45 Vict. c. 58, s. 141, rendered incapable of voluntary alienation; and accordingly such a pension cannot be taken in execution though given for past services, and though the officer cannot be called upon to serve: *Lucas* v. *Harris*, 18 Q. B. D. 127, C. A. See *Crowe* v. *Price*, 22 Q. B. D. 429, C. A.

Pension on resignation of benefice.

P. 756, line 18.—The Incumbents' Resignation Act, 1871, s. 10, expressly provides that pensions granted under that act shall be inalienable; but pensions or annuities granted by Order in Council pursuant to the Union of Benefices Act, 1860 (23 & 24 Vict. c. 142), to a retiring incumbent are alienable unless the Order expressly provides otherwise: *McBean* v. *Deane*, 30 Ch. D. 520.

Salary or income of bankrupt.

P. 758, note (*t*).—After *Ex parte Wicks*, add *Ex parte Webber*, *Re Webber*, 18 Q. B. D. 111; see further as to what is "salary or income," *Ex parte Benwell*, *Re Hutton*, 14 Q. B. D. 301, C. A.; *Re Shine*, *Ex parte Shine*, [1892] 1 Q. B. 522, C. A.

Mortgage of a Reversion.

Unconscionable bargains.

P. 759, line 35.—After *Nevill* v. *Snelling*, add *Fry* v. *Lane*, 40 Ch. D. 312; *James* v. *Kerr*, 40 Ch. D. 449, which cases show that unconscionable bargains are liable to be upset irrespective of the age of the persons with whom they are made, if the evidence shows that they were not cognisant of the nature of the transaction by reason of illiteracy or want of proper legal advice or of intelligence to understand it, or were acting under pressure through poverty. See also *Mainland* v. *Upjohn*, 41 Ch. D. 126, 135.

Mortgage of a Rent-charge.

What arrears of interest on mortgage recoverable.

P. 760, *ad fin.*—The stat. 3 & 4 Will. IV. c. 27, s. 42, applies only to rent-charges and other charges on land or rent, and to legacies and not to personal estate generally; and, accordingly, where a mortgage of a reversionary interest in personalty contained a covenant for payment of the principal with interest at 5 per cent. on a specified day, but no covenant for payment of interest thereafter, the usual decree for foreclosure having been made, it was held that redemption could be allowed only on payment of all interest in arrear extending over a period of fourteen years: *Mellersh* v. *Brown*, 45 Ch. D. 225.

Arrears of rent-charge.

P. 761, line 35.—After *Scottish Widows Fund* v. *Craig*, add *Northern Assurance Co.* v. *Harrison*, W. N. 1889, p. 74.

Mortgage of Leaseholds.

Goodwill.

P. 764, *ad fin.*—After *Chissum* v. *Dewes*, add *Pile* v. *Pile*, *Ex parte Lambton*, 3 Ch. D. 36, C. A.

Mortgages of Personalty.

Twyne's Case.

P. 767, line 31.—After *Martindale* v. *Booth*, add *Cookson* v. *Swire*, 9 App. Cas. 653, at p. 664.

P. 768, line 3.—The exception in 13 Eliz. c. 5, s. 5, in favour of alienations made upon good consideration and *bonâ fide* includes a purchase of any interest, whether legal or equitable, under the deed impeached: *Halifax Joint Stock Banking Co.* v. *Gledhill*, [1891] 1 Ch. 31.

Sequestration.

P. 768, line 15.—After *Ward* v. *Booth*, add *Ex parte Nelson*, *Re Hoare*, 14 Ch. D. 41, C. A.

Married woman.

P. 769, note (*a*).—Add reference to *Duncan* v. *Cashin*, L. R. 10 C. P. 554, as to furniture bought out of separate earnings.

Order and Disposition.

Trade fixtures.

P. 773, line 14.—After *Macintosh* v. *Trotter*, add *Ex parte Glegg, Re Latham*, 19 Ch. D. 7, C. A.; *Ex parte Allen, Re Fussell*, 20 Ch. D. 341, C. A.

P. 773, line 21.—Words which in a conveyance in fee are sufficient to pass trade fixtures, are sufficient to pass them in a mortgage of leaseholds by demise; but in such a case the mortgagee is not entitled to sever and remove the fixtures during the term, unless an intention to that effect appears in the mortgage-deed: *Southport and West Lancashire Banking Co.* v. *Thompson*, 37 Ch. D. 64, C. A.

Charge on legacy.

P. 777, line 31.—After *Moore* v. *Jervis*, add *Percival* v. *Dunn*, 29 Ch. D. 128.

Mortgage of partnership share.

P. 777, *ad fin.*—The remarks on mortgages by one partner to another of his undivided share in the partnership property were reproduced from the previous edition of this work (see 3rd edition, Vol. V., p. 265), without reference to the decision of Bacon, C. J., in *Re Bainbridge, Ex parte Fletcher*, 8 Ch. D. 218, which had unfortunately escaped the editor's notice. It was held in this case that the share of a partner in the partnership property was a chose in action giving a mortgagee thereof merely a right to account, and that such a mortgage was not within the reputed ownership clause of the Bankruptcy Act, 1869. This decision applies equally under the Bankruptcy Act, 1883, and was approved by *Fry*, L. J., in *Colonial Bank* v. *Whinney*, 30 Ch. D. 261 at p. 288 (see *infra*). See also as to the rights of an assignee of a share in a partnership, s. 31 of the Partnership Act, 1890, set out *post*, *sub tit.* PARTNERSHIP.

P. 778, line 36.—As to dormant partners continuing to allow the ostensible partners to carry on the business as belonging only to the latter, see *Reynolds* v. *Bowley*, L. R. 2 Q. B. 474.

Repeal.

P. 779, line 27.—The stat. 15 & 16 Vict. c. 83, is repealed by the stat. 46 & 47 Vict. c. 57, s. 113: see *sub tit.* PATENT AND COPYRIGHT, Vol. IV., pp. 599, *et seq.*

Shares in joint stock company

P. 779, *ad fin.*—The decision of the Court of Appeal (diss. *Fry*, L. J.), in *Colonial Bank* v. *Whinney*, was reversed by

not within reputed ownership clause.

the House of Lords, 11 App. Cas. 426, where it was held that shares in an incorporated company transferable by deed are things in action within the meaning of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44, sub-s. iii., and consequently are excepted from the doctrine of reputed ownership. The observations in the text on this question must therefore be read with reference to this decision: *Société Générale de Paris* v. *Tramways Union Co.* was affirmed by the House of Lords on another point, sub nom. *Société Générale de Paris* v. *Walker*, 11 App. Cas. 20.

Notice to trustees.

P. 781, line 11.—After *Timson* v. *Ramsbottom*, add *Low* v. *Bouverie*, [1891] 3 Ch. 82, C. A.; *Re Wyatt, White* v. *Ellis*, [1892] 1 Ch. 188, C. A. A notice with a wrong date was held to be sufficient: *Whittingstall* v. *King*, 46 L. T. 520.

Notice as regards shares.

P. 182.—Since the decisions of the House of Lords in *Société Générale de Paris* v. *Walker* (*supra*), and in *Colonial Bank* v. *Whinney* (*supra*), the remarks here inserted as to the effect of notice become immaterial so far as shares in companies are concerned.

Executor trading with testator's assets.

P. 790, line 11.—After *Shearman* v. *Robinson*, add *Fraser* v. *Murdoch*, 6 App. Cas. 855, Sc. See as to the extent of the right to indemnity of executors carrying on a business in accordance with the terms of the will, *Dowse* v. *Gorton*, [1891] A. C. 190.

P. 791, line 5.—The reference to *tit.* SETTLEMENTS, is to Vol. VI., pp. 176, *et seq.*

THE BILLS OF SALE ACTS.

General remarks.

Pp. 791 to 817.—These Acts have been productive of an enormous mass of litigation resulting in decisions exhibiting a most perplexing conflict of judicial opinion. All that can be done in this place is briefly to state the effect of the decisions on some of the principal points arising under the Acts, following the order of arrangement in which these points occur in Vol. III. of this work.

What are bills of sale.

Pp. 792 to 795.—The following decisions have been given as to the various expressions used in the definition of a "bill of sale" given in s. 4 of the Act of 1878.

Inventories.

A receipt does not require registration as a bill of sale if it is given merely by way of acknowledgment for the purchase money of goods, the title to which passes to the purchaser independently of the receipt: *Manchester, Sheffield and Lincolnshire Rail. Co.* v. *North Central Wagon Co.*, 13 App. Cas. 554; *Shepherd* v. *Pulbrook*, 59 L. T. 288, C. A. If an inventory and a receipt are given by separate documents operating independently there is no "inventory with receipt thereto attached" within the meaning of the section: per *Lord Herschell*, 13 App. Cas. at p. 561. See further as to inventories, *Haydon* v. *Brown*, W. N. 1888, p. 148, reversed on appeal, 59 L. T. 810; *French* v. *Bombernard*, 60 L. T. 48; *Jones* v. *Tower Furnishing Co.*, 61 L. T. 84.

Receipts.

Where, pursuant to a parol agreement, goods were delivered as a security, so as to pass the possession to a person advancing money, a receipt for the sum advanced, not embodying the terms of the agreement, was held not to require registration: *Newlove* v. *Shrewsbury*, 21 Q. B. D. 41, C. A. See also *Preece* v. *Gilling*, 53 L. T. 763; *Re Hood, Ex parte Blandford*, 41 W. R. 558.

Agreements conferring rights in equity.

P. 794, line 24.—An agreement which confers not a merely equitable right, but a right at law to chattels, is not within the mischief of the Bills of Sale Acts: *Morris* v. *Delobbel Flipo*, [1892] 2 Ch. 352. So, if actual possession of chattels is delivered at the time of the advance so that the legal possession passes immediately to the grantee, a contemporaneous agreement in writing regulating the rights of parties in regard to the transaction is not a bill of sale within the meaning of the Acts, and will not require registration: *Ex parte Hubbard, Re Hardwick*, 17 Q. B. D. 690, C. A.; *Hilton* v. *Tucker*, 39 Ch. D. 669; *Grigg* v. *National Guardian Ass. Co.* [1891] 3 Ch. 206; *Charlesworth* v. *Mills*, [1892] A. C. 231. But if an agreement for a loan is reduced to writing, and such agreement is void as a bill of sale, no subsequent delivery of possession to the grantee will give to him any right to the goods: *Ex parte Parsons, Re Townsend*, 16 Q. B. D. 532, C. A.; *Newlove* v. *Shrewsbury*, 21 Q. B. D. 41, C. A.

Building agreements.

P. 795, line 3.—It will be observed that in *Reeves* v. *Barlow*, the building agreement merely provided that the materials

should in certain events become the property of the landowner; but where a mortgage of building land together with the materials which might be brought on the premises empowered the mortgagees in certain events to sell the materials apart from the land, it was held that the deed was an assurance or a licence to take possession of personal chattels, and was therefore a bill of sale requiring registration: *Climpson* v. *Coles*, 23 Q. B. D. 465. See also *Church* v. *Sage*, 67 L. T. 800.

Hiring agreements.

P. 795, line 11, &c.—After *Ex parte Crawcour*, add *Redhead* v. *Westwood*, 59 L. T. 293; *Re Davis, Ex parte Rawlings*, 22 Q. B. D. 193, C. A.

If the real owner of chattels lets them out under a written agreement to another person, that is not a bill of sale; but the transaction must not be a colourable attempt to secure a loan by means of a pretended sale followed by a hire and purchase agreement: *Re Watson, Ex parte Off. Rec.*, 25 Q. B. D. 27, C. A.; *Madell* v. *Thomas*, [1891] 1 Q. B. 230, C. A.; *Beckett* v. *Tower Assets Co.*, *ib.* 638, C. A.

Agreements for lien.

P. 795, line 14.—An agreement for a lien on stock-in-trade to secure purchase money of a business was held to require registration as a bill of sale; *Cockburn* v. *Collins*, 35 Ch. D. 373.

Assignments or transfers.

P. 795, line 22.—As to the meaning of "assignment" or "transfer," see *Ex parte Hubbard, Re Hardwick*, 17 Q. B. D. 690, C. A.

Declarations of trust.

As to declarations of trust without transfer, see *Charlesworth* v. *Mills*, [1892] A. C. 231.

Assurances.

P. 795, line 26.—After *Baddeley* v. *Baddeley*, add *Re Roberts, Evans* v. *Roberts*, 36 Ch. D. 196.

Authorities, &c., to take possession.

P. 795, *ad fin.*—As to licences to take possession of chattels, see *Pulbrook* v. *Ashby*, 35 W. R. 779; *Climpson* v. *Coles*, 23 Q. B. D. 465.

Assignment for benefit of creditors.

P. 796, line 5, &c.—After *Boldero* v. *London and West. Discount Co.*, add *Ex parte Parsons, Re Townsend*, 16 Q. B. D. 532, C. A.; see also *Paine* v. *Matthews*, 53 L. T. 872. As to the registration of deeds of arrangement with creditors, see *ante*, pp. 79, *et seq.*

Marriage settlements.

P. 796, line 15.—Informal agreements for settlements made

in contemplation of marriage are within the exception: *Wenman* v. *Lyon*, [1891] 2 Q. B. 192, C. A.

P. 796, line 21.—As to transfers and assignments of ships, see *Gapp* v. *Bond*, 19 Q. B. D. 200, C. A.; *Coltman* v. *Chamberlain*, 25 Q. B. D. 328. Ships.

P. 796, line 34.—After *Ex parte Close, Re Hall*, add *Ex parte Parsons, Re Townsend*, 16 Q. B. D. 532, C. A.; *Ex parte Hubbard, Re Hardwick*, 17 Q. B. D. 695, C. A.; *Newlove* v. *Shrewsbury*, 21 Q. B. D. 41, C. A. Dealings in course of business.

A delivery order is not a bill of sale: *Grigg* v. *National Guardian Assurance Co.*, [1891] 3 Ch. 206.] As to a wharfinger's warrant, see *Re Cunningham, Attenborough's Case*, 28 Ch. D. 682.

Letters of hypothecation of imported goods are now exempted from the operation of the Bills of Sale Acts: see the stat. 53 & 54 Vict. c. 53, amended by the stat. 54 & 55 Vict. c. 35.

P. 797, line 5.—After *Swift* v. *Pannell*, add *Hall* v. *Smith*, W. N. 1887, p. 170; *Read* v. *Joannon*, 25 Q. B. D. 300. Absolute bills of sale.

P. 797, line 30.—As to the exception of debentures from the operation of the Acts, see *Ross* v. *Army & Navy Hotel Co.*, 34 Ch. D. 43, C. A.; *Edmonds* v. *Blaina Furnaces Co.*, 36 Ch. D. 215; *Levy* v. *Abercorris Slate, &c., Co.*, 37 Ch. D. 260; *Topham* v. *Greenside Glazed Firebrick Co.*, *ib.* 281; *Read* v. *Joannon*, 25 Q. B. D. 300; *Re Standard Manufacturing Co.*, [1891] 1 Ch. 627, C. A. Exception of debentures.

P. 799.—The effects of ss. 4, 5, and 6 of the Bills of Sale Act, 1882, is to render nugatory, except as against the grantor, any attempt to assign or charge by a bill of sale given by way of security for payment of money any specifically described after-acquired property of the grantor other than the things excepted by s. 6; and by the operation of s. 9 of the same Act a bill of sale purporting to assign after-acquired property generally is absolutely void: *Thomas* v. *Kelly*, 13 App. Cas. 506. See also *Hadden* v. *Oppenheim*, 60 L. T. 962. After-acquired property.

As to who is "a true owner" of personal chattels within the meaning of s. 5, see *Tuck* v. *Southern Counties Deposit* True owner.

Bank, 42 Ch. D. 471, C. A.; *Usher* v. *Martin*, 24 Q. B. D. 272; *Fenton* v. *Blythe*, 25 Q. B. D. 417; *Ex parte Barrett, Re Tamplin*, W. N. 1890, p. 48; 62 L. T. 264; 38 W. R. 351; *Ex parte Pratt, Re Field*, 63 L. T. 289; *Thomas* v. *Searles*, [1891] 2 Q. B. 408, C. A.; *Re Sarl, Ex parte Williams*, [1892] 2 Q. B. 591. See also as to the ownership of a married woman over chattels belonging to her for her separate use so as to enable her to give a valid bill of sale, *Walrond* v. *Goldmann*, 16 Q. B. D. 121.

Description in schedule.

P. 800, line 11.—The house or place where the goods are situated need not be stated: *Ex parte Hill, Re Lane*, 17 Q. B. D. 74. As to the meaning of "specifically described" in s. 4 of the Bills of Sale Act, 1882, see *Witt* v. *Banner*, 20 Q. B. D., 114, C. A.; *Carpenter* v. *Deen*, 23 Q. B. D. 566, C. A.; *Thomas* v. *Kelly*, 13 App. Cas. 506; *Hickley* v. *Greenwood*, 25 Q. B. D. 277; *Davidson* v. *Carlton Bank*, [1893] 1 Q. B. 82, C. A.

Trade machinery.

P. 800, line 12 *et seq.*—A mortgage of land passes to the mortgagee, without express mention, trade machinery which is of the nature of fixtures annexed to the land. This rule applies to an equitable mortgage by deposit of deeds: *Ex parte Lusty, Re Lusty*, 60 L. T. 160; 37 W. R. 304: see further as to trade machinery passing by a mortgage of land, *Sheffield, &c., Building Society* v. *Harrison*, 15 Q. B. D. 358, C. A.; *Topham* v. *Greenside Glazed Firebrick Co.*, 37 Ch. D. 281. But if it is intended that the mortgagee shall have power to sell the trade machinery apart from the land he must take a bill of sale of the machinery: see *Re Yates, Batcheldor* v. *Yates*, 38 Ch. D. 112, C. A.; *Climpson* v. *Coles*, 23 Q. B. D. 465.

Where an agreement for the sale of land provided that in certain events the vendors might enter on the land and take possession thereof and of everything thereon "which should not require registration within the Bills of Sale Act, 1878," it was held that trade machinery within the meaning of the Act was not included, and that the agreement was valid in other respects without registration: *Re London & Lancashire Paper Mills*, W. N. 1888, p. 36; 58 L. T. 798.

A vendor's lien will extend to trade machinery fixed to the land, the right being given by law. There is of course

in such a case nothing capable of registration: *Re Vulcan Ironworks Co.*, W. N. 1888, p. 37.

Articles excluded from the definition of trade machinery in s. 5 are not personal chattels within the meaning of the Act so as to render registration of an assignment thereof necessary, even though such articles are not actually affixed to the land with which they are assigned: *Topham* v. *Greenside Glazebrick Co.*, *supra*.

A deed, though void as a bill of sale in respect of articles coming within the definition of trade machinery, may be valid as to articles excluded from the definition: *Re Burdett, Ex parte Byrne*, 20 Q. B. D. 310, C. A.

Proceedings for recovery of rates otherwise than by warrant.

P. 801, *ad fin.*—A bill of sale will protect the holder if proceedings for recovery of rates are taken otherwise than by distress warrant: *Wimbledon Local Board* v. *Underwood*, [1892] 1 Q. B. 836.

Power to seize chattels.

P. 803, line 11.—The effect of s. 7 of the Act of 1882 is to incorporate into every bill of sale an implied power of seizure in any of the events mentioned in the section: *Watkins* v. *Evans*, 18 Q. B. D. 386, C. A. But an express power to seize the chattels may be inserted in the bill of sale provided that it does not purport to be exercisable in any event not specified in the section, and that it contains a proviso that the chattels shall not be liable to seizure except in the events specified in the section: *Thomas* v. *Kelly*, 13 App. Cas. 506; see *Ex parte Official Receiver, Re Morritt*, 18 Q. B. D. 222, C. A., where the power was to seize forcibly. See also *Lumley* v. *Simmons*, 34 Ch. D. 698, C. A.

A bill of sale will be void if it gives powers of seizure to several mortgagees for different sums: *Melville* v. *Stringer*, 13 Q. B. D. 392, C. A.

An express power of seizure may authorise the grantee to sell the goods by private treaty or public auction on or off the premises: *Bourne* v. *Wall*, 64 L. T. 530, 39 W. R. 510.

A bill of sale will be void if the terms of the power of sale provide that the purchaser shall not be bound to enquire whether any default in payment has been made: *Blaiberg* v. *Parsons*, 17 Q. B. D. 336; *Blaiberg* v. *Beckett*, 18 Q. B. D. 96, C. A.; or that the grantee may purchase the goods at a valuation: *Lyon* v. *Morris*, 19 Q. B. D. 139, C. A.; or that

after payment of the sum secured the bill of sale and other documents relating to the loan shall remain the property of the grantee: *Watson* v. *Strickland*, 19 Q. B. D. 391, C. A.; or that the grantee may retain out of the proceeds of sale his commission as auctioneer or his expenses generally: *Furber* v. *Cobb*, 18 Q. B. D. 494, C. A.; *Calvert* v. *Thomas*, 19 Q. B. D. 204, C. A.; *Macey* v. *Gilbert*, W. N. 1888, p. 111, 57 L. J. Q. B. 461. But the power may provide that the grantee may retain certain specified expenses, *e.g.*, of entry, of discharging distresses, executions, or incumbrances, or of seizure, keeping possession, removal, warehousing, and sale: *Ex parte Official Receiver, Re Morritt*, 18 Q. B. D. 222; or "any costs he might properly incur in defending and maintaining his rights under the bill:" *Lumley* v. *Simmons*, 34 Ch. D. 698.

The omission to insert or sufficiently refer to the proviso given in the statutable form that the goods shall not be liable to seizure for any cause other than those specified in s. 7 of the Act of 1882, will apparently vitiate the bill: *Thomas* v. *Kelly*, 13 App. Cas. 506, at 519. But the insertion of the proviso will not validate a bill of sale containing provisions which would otherwise render it void: *Re Williams, Ex parte Pearce*, 25 Ch. D. 656.

What are covenants necessary for maintaining the security.

The following covenants have been held to be "necessary for maintaining the security" within the meaning of s. 7: to pay rent, rates, taxes, &c.: *Turner* v. *Culpan*, 58 L. T. 340, 36 W. R. 278. So also covenants to repair or replace chattels which may become worn out or destroyed: *Consolidated Credit Corporation* v. *Gosney*, 16 Q. B. D. 24; *Furber* v. *Cobb*, 18 Q. B. D. 494, C. A. And a stipulation may be inserted that on the grantor's default, such payments may be made by the grantee to be repayable to him with interest on demand, and to be a charge on the property until repaid: *Goldstrom* v. *Tallerman*, 18 Q. B. D. 1, C. A.; *Topley* v. *Corsbie*, 20 Q. B. D. 350. But such stipulations are not deemed to be "necessary for the maintenance of the security" within the meaning of s. 7 of the Act of 1882; although therefore they may be enforced by action on the covenant, and will be taken into account on a foreclosure or redemption, an attempt to make the power of seizure given by that section applicable to a breach of such stipulations will avoid a bill of

sale: *Bianchi* v. *Offord*, 17 Q. B. D. 484; *Real & Personal Advance Co.* v. *Clears*, 20 Q. B. D. 304, C. A.

A covenant not to remove chattels which are likely to be damaged by removal from the premises without the consent of the grantee is good, and may apparently be made enforceable by seizure as being a covenant necessary for the maintenance of the security: *Ex parte Payne, Re Coton*, 56 L. T. 571, 35 W. R. 476, 4 Mor. 90. See *Furber* v. *Cobb*, 18 Q. B. D. 494, C. A.; see also *Ex parte Pope, Re Paxton*, 60 L. T. 428. Though the grantor must not be made to covenant as "beneficial owner" (see *Ex parte Stanford, Re Barber*, 17 Q. B. D. 259, C. A.), an express covenant for further assurance at the cost of the grantor is a covenant for the "maintenance of the security," and consequently free from objection: *Re Cleaver, Ex parte Rawlings*, 18 Q. B. D. 489, C. A.

Though the statutory form permits the insertion in a bill of sale of terms which the parties may agree upon for maintaining the security, such agreement will not make the terms necessary if they are not so in fact: *Furber* v. *Cobb*, 18 Q. B. D. 494, C. A.; and a bill of sale will be void if it purports to make the power of seizure exercisable on breach of any term agreed upon which is not strictly necessary for maintaining the security: *Bianchi* v. *Offord*, 17 Q. B. D. 484; *Real & Personal Advance Co.* v. *Clears*, 20 Q. B. D. 304, C. A. See as to covenants for insurance against fire, *Ex parte Stanford, Re Barber*, 17 Q. B. D. 259, C. A.; *Watkins* v. *Evans*, 18 Q. B. D. 386, C. A.; *Briggs* v. *Pike*, 66 L. T. 637.

Among terms for maintenance of the security which are apparently valid by reason of agreement between the parties, but not "necessary" for maintenance of the security, so as to allow the power of seizure to be made exercisable for breach thereof, are stipulations that the grantee may enter and view, inspect and take inventories of the chattels: *Ex parte Pope, Re Paxton*, 60 L. T. 428; and that in default by the grantor in keeping the chattels insured, the grantee may insure and repair, and that all monies so expended shall be repayable on demand, and shall, till repayment, be a charge on the chattels: *Topley* v. *Corsbie*, 20 Q. B. D. 350.

Bankruptcy of grantor.

By s. 7 a power of seizure may be made exercisable "if the

grantor shall become a bankrupt." The exact words need not be used provided the words used are to a like effect: see *Ex parte Allam, Re Munday*, 14 Q. B. D. 43. See also *Barr* v. *Kingsford*, 56 L. T. 861; *Gilroy* v. *Bowey*, 59 L. T. 223.

Removal and sale of chattels.

The protection afforded by s. 13 of the Act of 1882, is for the benefit of grantors of bills of sale only, and not of their landlords, and accordingly chattels may be removed by a grantee with the consent of the grantor in order to avoid a distress: *Tomlinson* v. *Consolidated Credit Corporation*, 24 Q. B. D. 135, C. A.

As to seizure under a bill of sale of goods on a public highway, see *O'Neil* v. *City and County Finance Co.*, 17 Q. B. D. 234.

Attestation.

P. 807, line 12.—"Duly attested" in s. 8 of the Act of 1882, means attested in accordance with the provisions of that Act, and with the statutable form of a bill of sale: *Parsons* v. *Brand*, 25 Q. B. D. 110, C. A. See *Bird* v. *Davey*, [1891] 1 Q. B. 29, C. A., as to what is a sufficient description of an attesting witness.

Execution by attorney.

A bill of sale may be executed under a power of attorney: *Furnivall* v. *Hudson*, [1893] 1 Ch. 335.

Registration.

P. 807, line 19.—A memorandum of deposit of a registered bill of sale by way of equitable sub-mortgage, does not require registration: *Ex parte Turquand, Re Parker* (No. 3), 14 Q. B. D. 636, C. A.

Statement of consideration.

Pp. 807 to 809.—An untrue statement of the consideration, though not a departure from the statutable form so as wholly to avoid the instrument under s. 9 of the Act of 1882, will nevertheless render it void under s. 8 of that Act, so far as relates to the personal chattels therein, leaving the covenant to pay the money unaffected: *Heseltine* v. *Simmonds*, [1892] 2 Q. B. 547, C. A. See further as to what is a sufficient statement of the consideration: *Sharp* v. *McHenry*, 38 Ch. D. 427; *Richardson* v. *Harris*, 22 Q. B. D. 268, C. A.; *Ex parte Nelson, Re Hockaday*, W. N. 1887, p. 7, 35 W. R. 264, C. A.; *Collis* v. *Tewson*, 46 L. T. 387; *Mayer* v. *Mindlevich*, 59 L. T. 400; *Davidson* v. *Carlton Bank*, [1893] 1 Q. B. 82, C. A. That a collateral agreement for the application of the money need not be stated: see *Thomas* v. *Searles*, [1891] 2 Q. B. 408, C. A.

P. 809, line 18.—That a bill of sale given by way of security

is avoided by non-conformity with the statutable form, see *Davies* v. *Rees*, 17 Q. B. D. 408, C. A.; *Thomas* v. *Kelly*, 13 App. Cas. at p. 511. Conformity with statutable form.

It follows that several classes of instruments coming within the definition of a "bill of sale" given by s. 4 of the Act of 1878, *e.g.*, licenses to seize goods, inventories, &c., are no longer available as securities for payment of money: *Ex parte Parsons, Re Townsend*, 16 Q. B. D. 532, C. A. See further as to variations from the statutable form, *Hughes* v. *Little*, 18 Q. B. D. 32, C. A.; *Mackay* v. *Merritt*, 34 W. R. 433.

If a single deed purports to secure money on land and also on personal chattels, the instrument, though void for non-conformity with the statutable form so far as regards the personal chattels, may be valid as regards the other property comprised therein: *Re Burdett, Ex parte Byrne*, 20 Q. B. D. 310, C. A. See *Re O'Dwyer*, 19 L. R. Ir. 19; *Stevens* v. *Marston*, 39 W. R. 129, 60 L. J. Q. B. 192, C. A.; *Re Bansha, &c., Co.*, 20 L. R. Ir. 181. And if personal chattels and other property are assigned and scheduled together, that will of itself vitiate the instrument as regards the personal chattels as being a departure from the statutable form: *Cochrane* v. *Entwisle*, 25 Q. B. D. 116, C. A.

The names and addresses of the grantor and grantee must be stated in the instrument, but ambiguity of description of a party, if capable of ascertainment from the context of the instrument will not avoid a bill of sale: *Simmonds* v. *Woodward*, [1892] A. C. 100. A bill of sale may be given or taken in the incorporated name of a company: *Re Cunningham*, 28 Ch. D. 682. Statement of names, &c., of parties.

See as to what is a sufficient description in the affidavit, *post*, p. 183. Distinct sums payable to separate creditors cannot be secured by a single bill of sale: *Melville* v. *Stringer*, 13 Q. B. D. 392, C. A. Several grantees.

Recitals necessary to explain the nature of the transaction or the intention of the parties may be inserted: *Roberts* v. *Roberts*, 13 Q. B. D. 794, C. A. But unnecessary prolixity of recitals may of itself vitiate a bill of sale: *Ex parte Stanford, Re Barber*, 17 Q. B. D. 259, C. A. Recitals.

The introduction into the operative words of assignment of the words "as beneficial owner," thereby purporting to imply full statutory covenants for title, will avoid the instrument: Conveyance "as beneficial owner."

Ex parte Stanford, Re Barber, 17 Q. B. D. 259, C. A. See *ante*, p. 179.

A bill of sale cannot be made to cover unascertained further advances: *Cook* v. *Taylor*, 3 T. L. R. 800; nor by way of indemnity against liability in a guarantee, the liability whereon is unascertained: *Hughes* v. *Little*, 18 Q. B. D. 32, C. A.

Interest.

Interest may be made payable at any rate agreed upon: *Ex parte Stanford, Re Barber*, 17 Q. B. D. 259, C. A. But it must be rateable and calculated up to the time when the principal is to be called in: *Blankenstein* v. *Robertson*, 24 Q. B. D. 543. Capitalization of interest will vitiate the bill: *Davis* v. *Burton*, 11 Q. B. D. 537, C. A.

A lump sum must not be made payable in lieu of interest: *Myers* v. *Elliott*, 16 Q. B. D. 526, C. A.; *Ex parte Abrams, Re Johnstone*, 50 L. T. 184.

Interest may be made payable at a specified rate, either per annum or per month or otherwise as agreed: *Lumley* v. *Simmons*, 34 Ch. D. 698, C. A.

The instalments by which the principal and interest are to be payable need not be equal instalments: *Goldstrom* v. *Tallerman*, 18 Q. B. D. 1, C. A.: *Re Cleaver, Ex parte Rawlings*, 18 Q. B. D. 489, C. A.; see *Simmons* v. *Woodward*, [1892] A. C., 100.

If default is made in payment of an instalment of principal and interest the whole of the debt may be payable forthwith: *Lumley* v. *Simmons*, 34 Ch. D. 698, C. A.

It is not necessary that the principal and interest should be made payable together. The payment of the principal may be postponed until the interest has been paid: *Edwards* v. *Marston*, [1891] 1 Q. B. D. 225, C. A.; and *vice versâ*: *Goldstrom* v. *Tallerman*, 18 Q. B. D. 1, C. A.; *Re Cleaver, Ex parte Rawlings*, 18 Q. B. D. 489, C. A. So the principal may be made payable by specified instalments with rateable interest on the instalments for the time being remaining unpaid: *Haslewood* v. *Consolidated Credit Co.*, 25 Q. B. D. 555, C. A.

The principal with rateable interest may be made payable with interest in a single sum on a fixed date instead of by instalments: *Watkins* v. *Evans*, 18 Q. B. D. 386, C. A. See *Ex parte Payne, Re Coton*, 56 L. T. 571, 35 W. R. 476; *Re Cleaver, Ex parte Rawlings*, 18 Q. B. D. 489, C. A.

P. 809, note (*q*).—The repeal of sub-s. 1 of s. 10 of the Act of 1878, requiring attestation by a solicitor, applies only to bills of sale given by way of security for payment of money. Other bills should still be attested as required by the repealed sub-section, and their effect should be explained to the grantor: *Casson* v. *Churchley*, 50 L. T. 568, 53 L. J. Q. B. 335. Attestation by solicitor.

P. 810, *ad fin.*—After *Lamb* v. *Brace*, add *Sharp* v. *McHenry*, 38 Ch. D. 427. Clerical errors.

Pp. 811 to 813.—Numerous cases have been decided as to what is a sufficient description in the affidavit of the grantor and attesting witness. The affidavit.

As to residence, see *Greenham* v. *Child*, 24 Q. B. D. 29; *Simmonds* v. *Woodward*, [1892] A. C. 100. Residence.

As to occupation, see *Ex parte Chapman, Re Davey*, 45 L. T. 268; *Sharp* v. *McHenry*, 38 Ch. D. 427; *Lee* v. *Turner*, 20 Q. B. D. 773. A peer is sufficiently described by his title: *Re Earl of Limerick*, 7 Ir. Jur. (N. S.) 65. Occupation.

The fact that the grantor has given an assumed name has been held not to be of itself sufficient to avoid the bill of sale: *Downs* v. *Salmon*, 20 Q. B. D. 775; *Central Bank, &c.* v. *Hawkins*, 62 L. T. 901; but see *contra*, *Lee* v. *Turner*, 20 Q. B. D. 773. Name and description.

P. 814, line 16.—A policy of life assurance deposited as a collateral security is not a defeazance within the meaning of s. 10 (3) of the Act of 1878: *Carpenter* v. *Deen*, 23 Q. B. D. 566, C. A. See also as to defeazances, &c., *Thomas* v. *Searles*, [1891] 2 Q. B. 408, C. A.; *Heseltine* v. *Simmons*, [1892] 2 Q. B. 547, C. A. Defeazance.

As to promissory notes given by way of collateral security, see *Counsell* v. *Lon. & Westminster Loan, &c., Co.*, 19 Q. B. D. 512, C. A.; *Monetary Advance Co.* v. *Cater*, 20 Q. B. D. 785.

The result of sub-s. 3 is to render necessary to the validity of a bill of sale that all the terms of the contract should appear on the face of the bill itself, or on the same paper or parchment therewith, and not be dependent for its effect on some other instrument or instruments, whether expressly referred to or otherwise: *Lee* v. *Barnes*, 17 Q. B. D. 77; *Watson* v. *Strickland*, 19 Q. B. D. 391, C. A; *Sharp* v. *McHenry*, 38 Ch. D. 427.

Renewal.

P. 815, line 11.—After *Askew* v. *Lewis*, add *Re Emery, Ex parte Chief Official Receiver*, 21 Q. B. D. 405, C. A.; *Re Parsons and Furber*, [1893] 2 Q. B. 122, C. A.

P. 815, line 15.—After *Karet* v. *Kosher Meat Association*, add *Fenton* v. *Blythe*, 25 Q. B. D. 417.

Rectification of register.

P. 816, line 3 *et seq.*—Where, through an accidental omission, the affidavit did not state the residence of the attesting witness, it was held that the power of rectification given by s. 14 applies only to the register itself, and that there was no power to rectify the omission in the affidavit, or to allow a supplementary affidavit to be filed to supply the omission: *Crew* v. *Cummings*, 21 Q. B. D. 420, C. A.; see *contra*, *Re Dobbins' Settlement*, 57 L. T. 277, 56 L. J. Q. B. 295. The time for registration cannot be extended under this section so as to defeat vested rights: *Re Parsons and Furber*, [1893] 2 Q. B. 122, C. A.

For a full and able statement of the present state of the law with regard to bills of sale, see Mr. Herbert Reed's Treatise on the Bills of Sale Acts (9th Edition, 1892).

Mortgages of Debts and Sub-mortgages.

Clause as to liability to sue.

P. 818, line 5.—Reference may be made to *Ex parte Mure*, 2 Cox 63, and *Williams* v. *Price*, 1 S. & S. 581, as illustrating the risks attending an omission to insert in an assignment of a debt a clause protecting the assignee against an obligation to sue for the debt.

Notice of assignment.

P. 818, line 14.—Priority of notice does not confer precedence in the case of a sub-mortgage of real estate: *Re Richards, Humber* v. *Richards*, 45 Ch. D. 589. Where a mortgagee of a debt due to a company had given notice to the debtor, it was held that he did not lose his priority over debentures issued by the company charging all its property and containing a condition, of which the mortgagee had no actual notice, that the company should not be at liberty to create any mortgage or charge in priority to the debentures: *English and Scottish Mercantile Investment Co.* v. *Brunton*, [1892] 2 Q. B. 700, C. A.

Judicature Act, 1873, s. 25 (6).

P. 819, *ad fin.*—In *Tancred* v. *Delagoa Bay, &c., Rail. Co.*, 23 Q. B. D. 239, the Divisional Court (*Denman* and *Charles* JJ.), disapproved of the decision in *Nationa*

Provincial Bank v. *Harle*, and held that a mortgage of debts in the ordinary form is an "absolute assignment not purporting to be by way of charge only" within s. 25 (6) of the Judicature Act, 1873.

Pledges by Factors.

Factors Act, 1889.

Pp. 820 to 824.—The Factors Acts, 1823 to 1877 (viz., 4 Geo. IV. c. 83; 6 Geo. IV. c. 94; 5 & 6 Vict. c. 39, and 40 & 41 Vict. c. 39), which are referred to in these pages, are now repealed by the Factors Act, 1889 (52 & 53 Vict. c. 45), which is called An Act to amend and consolidate the Factors Acts.

The Act, which is mainly a consolidating one, must now be read in connection with the remarks on the law as to pledges by factors.

Except as part of the title of the Act, the term "factor" is not used or defined. The Act relates only to dealings with "mercantile agents" as defined by s. 1, sub-s. (1). As to the meaning of this definition, see *Hastings Limited* v. *Pearson*, [1893] 1 Q. B. 62.

The general effect of the Act is to substantially re-enact the main provisions of the repealed Acts in an abbreviated and simplified form.

Bill of lading.

P. 821, *ad fin.*—After *Re Wezinthus*, add *Kemp* v. *Falk*, 7 App. Cas. 573; *Sewell* v. *Burdick*, 10 App. Cas. 74, 80.

Documents of title.

P. 822, line 32.—After *Freeman* v. *Appleyard*, add *Williams* v. *Colonial Bank*, 38 Ch. D. 388, C. A., at 403; affirmed 15 App. Cas. 267, *sub nom. Colonial Bank* v. *Cady & Williams*.

Fund in Court.

Stop orders.

P. 824, *ad fin.*—The decision in *Mutual Life Assurance Co.* v. *Langley*, was affirmed on the point as to the effect of the stop order and notice, 32 Ch. D. 460, C. A. A second incumbrancer on a fund in Court who at the time of taking his security had notice of the first incumbrance, cannot gain priority by first obtaining a stop order: *Re Holmes*, 29 Ch. D. 786, C. A.

P. 825, line 3.—After *Thompson* v. *Tomkins*, add *Haly* v. *Barry*, L. R. 3 Ch. 452, C. A.; *Re Hamilton's Windsor Ironworks, Ex parte Pitman*, 12 Ch. D. 707.

P. 825, line 32.—After *Watts* v. *Jeffryes*, add *Brereton* v. *Edwards*, 21 Q. B. D. 488, C. A.

Life Policies.

Insurable interest.

P. 827, note (*a*).—After *Wainwright* v. *Bland*, add *Barnes* v. *London, Edinburgh, &c., Ins. Co.*, [1892] 1 Q. B. 864.

Erratum.

P. 828, line 18.—Delete word "merely:" see *Burnand* v. *Rodocanachi*, 7 App. Cas. at p. 340.

Public policy.

P. 828, note (*b*).—After *City Bank* v. *Sovereign Assurance Co.*, add *Cleaver* v. *Mutual Reserve Fund Life Ass.*, [1892] 1 Q. B. 147, C. A.

Right to policy moneys.

P. 829, line 13.—In *Salt* v. *Marquis of Northampton*, [1892] A. C. 1, it was held that a stipulation in a mortgage deed was void which provided that the proceeds of a policy effected by the mortgagees on the life of the mortgagor as part of the security should belong absolutely to the mortgagees.

Misrepresentation.

P. 830, line 26.—After *Casenove* v. *British Equitable Ins. Co.*, add *Thomson* v. *Weems*, 9 App. Cas. 671.

Notice of assignment.

P. 831, line 31.—Notice of the assignment of a policy under 30 & 31 Vict. c. 144, does not affect the priorities of incumbrancers *inter se*, so as to enable a person who has advanced money upon a second charge with notice of the first, by giving statutory notice to the office, to exclude the person who has the prior incumbrance: *Newman* v. *Newman*, 28 Ch. D. 674.

Ships, Freight, &c.

Mortgagee in possession.

P. 837, line 29.—After *Johnson* v. *Royal Mail Co.*, add *The Orchis*, 15 P. D. 38, C. A.

Mortgagee's right to freight.

P. 837, *ad fin.*.—After *Dean* v. *M'Gee*, add *Rusden* v. *Pope*, L. R. 3 Ex. 269; *Japp* v. *Campbell*, 57 L. J. Q. B. 79.

Employment of ship.

P. 838, line 9.—After *Keith* v. *Burrows*, add *The Keroula*, 11 P. D. 92; *The Blanche*, 57 L. T. 818.

Ship and appurtenances.

P. 839, line 6.—After *Gale* v. *Laurie*, add *Coltman* v. *Chamberlain*, 25 Q. B. D. 328.

Mortgages by Companies.

Power to mortgage.

P. 839, line 23.—The decision of the Exchequer Chamber in *Riche* v. *Ashbury, &c., Co.* was reversed, but on a point not affecting the rule here stated, see L. R. 7 H. L. 653. Add *Re Pyle Works*, 44 Ch. D. 534, C. A.

P. 839, line 30.—The law as to implied powers of companies to borrow is summed up by *Stirling*, J., in *General Auction, &c., Co.* v. *Smith*, [1891] 3 Ch. 432.

P. 841, line 23.—As to ratification of unauthorised borrowing by directors, see *Grant* v. *United Kingdom Switchback Rails. Co.*, 40 Ch. D. 135, C. A.

P. 842, line 19.—After *Chapleo* v. *Brunswick Building, &c., Soc.*, add *Whitehaven Joint Stock Banking Co.* v. *Reed*, 54 L. T. 360, C. A.; *Firbank's Executors* v. *Humphreys*, 18 Q. B. D. 54, C. A.

P. 842, *ad fin.*—After *Yorkshire Railway Wagon Co.* v. *Maclure*, add *Re Cornwall Minerals Co.*, 48 L. T. 41, C. A.

Registration.

As to the necessity for registration of mortgages affecting the property of joint stock companies under s. 43 of the Companies Act, 1862 (25 & 26 Vict. c. 89), see *Re Underbank Mills, &c., Co.*, 31 Ch. D. 226; *Re General Horticultural Co., Whitehouse's Claim* (No. 2), 53 L. T. 699.

Chapter III.—Power to Lend on Mortgage, &c.

Mortgages to Trustees.

Mortmain Act, 1888.

P. 844, line 6.—The Mortmain Act, 9 Geo. II., c. 36, is now repealed, but its provisions are substantially re-enacted by the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42); see Vol. VI., pp. 867, *et seq.*

Trustee Act, 1888.

P. 848, line 14.—As to the protection of trustees dispensing with investigation of a lessor's title or accepting a short title, see the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 4 (2), (3), set out *sub tit.* Settlements, Vol. VI., p. 275.

P. 848, line 25.—*Fry* v. *Tapson* is also reported 28 Ch. D.

Valuation of property.

268. Where two trustees, one of whom was a solicitor empowered to make professional charges for work done in connection with the trust, advanced trust money on mortgage of house property which failed to realise the amount advanced, it was held that the trustees were jointly and severally liable for the money lost; but it appearing that the loan had been negotiated and carried out by the solicitor-trustee, and that the other trustee had concurred on the solicitor's advice, and on the faith that he had properly looked into the matter, it was held that, as between the trustees themselves, the solicitor was primarily liable for the breach of trust: *Re Partington, Partington* v. *Allen*, 57 L. T. 654. See further as to the valuation of property on a loan by trustees, the Trustee Act, 1888, s. 4 (1), set out *sub tit.* SETTLEMENTS, Vol. VI. pp. 274, 275. See also *Re Somerset, Somerset* v. *Poulet*, W. N. 1893, p. 66, 41 W. R. 536.

Amount of advance.

P. 849, line 4.—After *Stickney* v. *Sewell*, add *Re Olive, Olive* v. *Westerman*, 34 Ch. D. 70; *Learoyd* v. *Whiteley*, 12 App. Cas. 727.

P. 849, line 13.—After *Speight* v. *Gaunt*, add *Re Pearson, Oxley* v. *Scarth*, 51 L. T. 692. Trustees may now lend up to two-thirds of the value on land of any tenure, provided the security is in other respects proper: see the Trustee Act, 1888, s. 4 (1).

P. 849, line 25.—The reference to *tit.* SETTLEMENTS is to Vol. VI. pp. 270, *et seq.*, where this subject is very fully discussed.

Joint account clause.

P. 851, line 6.—Notwithstanding the insertion of a joint account clause in a mortgage deed, evidence is admissible to show that it was the intention that the mortgagees should be entitled to the mortgage money as tenants in common: *Re Jackson, Smith* v. *Sibthorpe*, 34 Ch. D. 732.

Mortgages to Bankers.

Appropriation of payments.

P. 854, line 29.—After *Mills* v. *Fowkes*, add *Re Hallett's Estate, Knatchbull* v. *Hallett*, 13 Ch. D. 696, C. A.; *Re Sherry, London & County Banking Co.* v. *Terry*, 25 Ch. D. 692, C. A.; *Hancock* v. *Smith*, 41 Ch. D. 456, C. A.

Mortgages to Solicitors.

Profit costs.

P. 856, line 12.—A mortgagee cannot charge his mortgagor with professional or profit costs, such as for preparation of the mortgage deed, &c., if he is a solicitor, or for valuation of the property for the purposes of the mortgage if he is a surveyor, and any covenant or agreement by the mortgagor purporting to empower a professional mortgagee to make such charges is void as clogging the redemption: *Field* v. *Hopkins*, 44 Ch. D. 524, C. A. See *Re Roberts*, 43 Ch. D. 52; *Re Wallis, Ex parte Lickorish*, 25 Q. B. D. 176, C. A.; *Stone* v. *Lickorish*, [1891] 2 Ch. 363; *Re Doody, Fisher* v. *Doody*, [1893] 1 Ch. 129, C. A.; *Wellby* v. *Still*, W. N. 1893, p. 91.

Bankruptcy of client.

P. 857, line 14.—The obligations of a solicitor towards his client extend to the cases where the solicitor of a bankrupt is dealing with the trustee in the bankruptcy of his client: *Luddy's Trustee* v. *Peard*, 33 Ch. D. 500.

Unusual clauses in mortgage.

P. 857, line 22.—After *Cockburn* v. *Edwards*, add *Cradock* v. *Rogers*, W. N. 1885, p. 134, 51 L. T. 191, 53 L. J. Ch. 968, C. A. In *Pooley's Trustee* v. *Whetham*, 33 Ch. D. 111, C. A., under the circumstances of the case a power of sale on default without notice in a mortgage to a solicitor was upheld, though the mortgagor had no independent advice, and it did not appear that the unusual form of the power had been explained to him.

Champerty and maintenance.

P. 857, line 34.—After *Wood* v. *Downes*, add *James* v. *Kerr*, 40 Ch. D. 449.

Mortgages to Building Societies.

Effect of statutory receipt.

P. 858, line 26.—H. mortgaged property to building societies established under the stat. 5 & 6 Will. IV. c. 32, and executed a second mortgage to the respondents. Afterwards he borrowed £6,000 from the appellants, part of the loan being applied in paying off the building societies, and the balance being paid to H. Upon being paid off the building societies indorsed on their respective mortgages receipts in accordance with s. 5 of the Act, and delivered the indorsed deeds with other muniments of title to the appellants. At the same time H. executed a mortgage of the property to the appellants

to secure the £6,000. Neither the building societies nor the appellants had notice of the second mortgage. It was held (overruling on this point *Pease* v. *Jackson*, L. R. 3 Ch. 576, and *Robinson* v. *Trevor*, 12 Q. B. D. 423, C. A., and reversing the decision of the Court of Appeal), that the statutory receipt operated as a conveyance in favour of the appellants, as being the persons at its date having the best right to a conveyance of the property; and, accordingly, that the appellants having paid off the first mortgagees and having got from them possession of the muniments of title and acquired the legal estate, their mortgage had priority over the respondent's mortgage, in respect of the whole loan of £6,000: *Hosking* v. *Smith*, 13 App. Cas. 582. Compare the corresponding provision in s. 16, sub-s. (7) of the Friendly Societies Act, 1875.

Amount for time being secured.

P. 859, line 34.—As to ascertaining the amount for the time being secured to a building society by mortgages from its members within the meaning of the Building Societies Act, 1874, s. 15 (2), see *Neath Building Society* v. *Luce*, 43 Ch. D. 158.

Alteration of rules.

P. 859, *ad fin.*—Where a mortgage contained a proviso for redemption on payment according to the rules "for the time being" of the Society, it was held that the mortgagor desiring to redeem must do so in accordance with new rules which had been duly passed and certified after the date of the mortgage: *Rosenberg* v. *Northumberland Building Society*, 22 Q. B. D. 373, C. A.

Priority of securities.

As to the priorities of securities given by building societies for advances to them, see *Blackburn, &c., Building Benefit Society* v. *Cunliffe, Brooks & Co.*, 29 Ch. D. 902, C. A. *Re Mutual Aid Permanent Building Society*, 30 Ch. D. 434, C. A.

Chapter IV.—Rights and Disabilities of the Mortgagor.

1. *Incidents of Equity of Redemption.*

Agreement for lease by mortgagor alone.

P. 867, *ad fin.*—Where, before 1882, a mortgagor without the consent of his mortgagee agreed to grant a lease to T., and the mortgagee refused to concur in the lease, it was held,

by *Kekewich*, J., that T. was entitled to redeem the mortgage: *Tarn* v. *Turner*, 39 Ch. D. 456, C. A.

P. 868, line 23.—A second mortgagee who has lawfully taken possession may cut and remove growing crops as against the first mortgagee: *Re Gordon, Ex parte Off. Rec.*, 61 L. T. 30. Growing crops.

P. 870, line 28.—After *Wright* v. *Atkin*, add *Harper* v. *Applin*, 54 L. T. 383. Timber.

2. *Redemption.*

P. 875, line 23.—The decision in *Sackville* v. *Smyth* was followed by *North*, J., in *Re Smith, Hannington* v. *True*, 33 Ch. D. 195. A testator devised his real estate upon certain trusts, and after directing his "private debts" to be paid out of the proceeds of certain policies, he devised and bequeathed his residuary real and personal estate upon certain trusts, declaring that his "trade debts" should be a charge on his personal estate: after the date of his will he deposited the title deeds with his bankers to secure an overdrawn trade account; it was held by *North*, J., that the testator had sufficiently expressed a "contrary intention" to entitle the devisee of the real estate to have it exonerated from the banker's lien: *Re Fleck, Colston* v. *Roberts*, 37 Ch. D. 677. Locke King's Act. Contrary intention.

P. 875, *ad fin.*—As to extension of the provisions of Locke King's Act to leaseholds by virtue of the amending Act, 40 & 41 Vict. c. 34, see *Re Kershaw, Drake* v. *Kershaw*, 37 Ch. D. 674. Application of Act to leaseholds.

Land delivered in execution specifically devised by a subsequent will of the judgment debtor is within Locke King's Act, so that the devisee is not entitled to have the land exonerated by the personal estate: *Re Anthony, Anthony* v. *Anthony*, [1892] 1 Ch. 450. Land delivered in execution.

P. 877, line 24.—The widow of an insolvent was allowed to retain out of assets which came into her hands as his administratrix the amount of a loan made to him out of her separate property for purposes of his business: *Re May, Crawford* v. *May*, 45 Ch. D. 499. Retainer by widow administratrix of loan to husband.

Pp. 878 to 880.—A mortgagor sued on his covenant may redeem although he has absolutely assigned the equity of redemption: *Kinnaird* v. *Trollope* (No. 1), 39 Ch. D. 636. Persons entitled redeem.

A tenant holding under an agreement by a mortgagor alone for a lease which the mortgagee refuses to concur in granting (the case not being within the Conveyancing Act, 1881), is entitled to redeem: *Tarn* v. *Turner*, 39 Ch. D. 456, C. A. The personal representatives of a mortgagor may redeem a mortgage of real and personal estate: *Hall* v. *Heward*, 32 Ch. D. 430, C. A.

Tender of mortgage money.

P. 882, line 3.—The general rule that a mortgagee is entitled to six months' notice of intention to pay off the mortgage, or to six months' interest in lieu thereof, applies without exception, whatever may be the nature of the mortgaged property: *Smith* v. *Smith*, [1891] 3 Ch. 550. But if a mortgagee having received notice accepts an order for payment of his debt out of a fund in Court, delay in completion of the order, by reason of which payment cannot be made, at the expiration of six months from the date of the notice, will not entitle the mortgagee to a fresh notice or to additional interest in lieu thereof: *Re Moss, Levy* v. *Sewill*, 31 Ch. D. 90. The rule does not apply to an equitable mortgagee by deposit of deeds accompanied by a memorandum of deposit: *Fitzgerald's Trustee* v. *Mellersh*, [1892] 1 Ch. 385.

A mortgagor may, at any time after the day fixed for redemption, tender immediate payment of the principal and interest due and costs, together with six months' interest in advance, and the mortgagee will be bound to accept such payment and reconvey accordingly: *Johnson* v. *Evans* (No. 2), W. N. 1889, p. 95, 61 L. T. 18, C. A.

P. 882, line 26.—A mortgagee improperly refusing to receive his money may be deprived of costs, and may even be ordered to pay costs: *Hall* v. *Heward*, 32 Ch. D. 430, C. A.; *Kinnaird* v. *Trollope* (No. 2), 42 Ch. D. 610.

P. 882, *ad fin.*—In the case of an equitable mortgage by deposit of deeds the mortgagor cannot get back his deeds until he has actually paid the money: a mere tender not accepted by the mortgagee is not sufficient to entitle the mortgagor to bring an action of detinue, but he may bring an action for redemption: *Bank of New South Wales* v. *O'Connor*, 14 App. Cas. 273, P. C.

P. 883, line 12.—Though a mortgagor must tender the

money unconditionally, a tender will be good if made under protest reserving to the mortgagor the right to dispute the amount claimed to be due: *Greenwood* v. *Sutcliffe*, [1892] 1 Ch. 1, C. A.

Chapter V.—Rights and Disabilities of the Mortgagee.

Rights of Mortgagee Generally.

Loss of deed.

P. 889, line 6.—After *James* v. *Rumsey*, add *Caldwell* v. *Matthews*, W. N. 1890, p. 84, 62 L. T. 799.

Costs.

P. 889, *ad fin.*—After *Case* v. *Belcher*, add *Melbourne Banking Co.* v. *Brougham*, 4 App. Cas. 156.

P. 890, line 34.—In *National Provincial Bank of England* v. *Games*, 31 Ch. D. 582, the Court of Appeal went fully into the general principles upon which costs are allowed to mortgagees. See as to expenditure by a mortgagee of money in improvements, *Bright* v. *Campbell*, 53 L. T. 428, 54 L. J. Ch. 1077, C. A.

P. 891, line 12.—After *Mayer* v. *Murray*, add *Charles* v. *Jones* (No. 1), 33 Ch. D. 80, C. A.

P. 892, line 10.—After *England* v. *Codrington*, add *Ashworth* v. *Lord*, 36 Ch. D. 545.

P. 892, line 13.—After *Gregg* v. *Slater*, add *Re Roberts*, 43 Ch. D. 52; *Field* v. *Hopkins*, 44 Ch. D. 524, C. A.; *Re Wallis, Ex parte Lickorish*, 25 Q. B. D. 176, C. A.

Fire insurance.

P. 894, line 33.—After *Rayner* v. *Preston*, add *Castellain* v. *Preston*, 11 Q. B. D. 380, C. A.; *Westminster Fire Office* v. *Glasgow, &c., Investment Soc.*, 13 App. Cas. 699.

Computation of interest.

P. 896, line 25.—After *Monkhouse* v. *Corporation of Bedford*, add *Elton* v. *Curteis*, 19 Ch. D. 49.

Proviso for reduction of interest.

P. 898, line 33.—After *Union Bank of London* v. *Ingram*, add *Cockburn* v. *Edwards*, 18 Ch. D. 449, C. A.; *Bright* v. *Campbell*, 41 Ch. D. 388, where the mortgagee had entered into possession by arrangement with the mortgagor, and no interest was in arrear at the time of taking possession.

Bonus or commission on advance.

P. 898, line 37.—In the absence of fraud or pressure, a stipulation that a mortgagor shall pay to the mortgagee a bonus or commission in respect of an advance on a speculative security, in consideration for the accommodation, is

valid: *Mainland* v. *Upjohn*, 41 Ch. D. 126. See also *Bucknell* v. *Vickery*, 64 L. T. 701, P. C.

Mortgagee's right to title deeds.

P. 899, line 22.—After *Hooper* v. *Ramsbottom*, add *Stokes* v. *Stokes*, W. N. 1886, p. 184.

Loss of mortgage deeds, &c.

P. 902, line 1.—After *James* v. *Rumsey*, add *Caldwell* v. *Matthews*, W. N. 1890, p. 84, 62 L. T. 799.

Mortgagee in Possession.

Accounts.

P. 904, line 28.—After *Wilson* v. *Metcalfe*, add *Ashworth* v. *Lord*, 36 Ch. D. 545.

Where mortgagees in possession, who were brewers, let a public-house comprised in the mortgage with a restrictive covenant by the tenant to take his beer from them, it was held that the mortgagees must account for the full rent which would have been obtainable if the premises had been let without restriction but not for profits made by sale of beer to the tenant: *White* v. *City of London Brewery Co.*, 42 Ch. D. 237, C. A.

As to the strictness with which mortgagees in possession are required to account for receipts, see *Noyes* v. *Pollock* (No. 1), 30 Ch. D. 336, C. A. But the fact that a mortgagee is in receipt of the rents and profits does not necessarily make him chargeable as a mortgagee in possession: *Noyes* v. *Pollock* (No. 2), 32 Ch. D. 53, C. A.

P. 908, *ad fin.*—After *Norton* v. *Cooper*, add *Taylor* v. *Mostyn*, 33 Ch. D. 226, C. A.

Where mortgagees of a going concern had power in default of payment, to enter and "manage" and receive the rents and profits, they were allowed, on taking the accounts, expenses of management, not only out of the rents, but out of surplus proceeds of sale: *Bompas* v. *King*, 33 Ch. D. 279, C. A.

Compensation to tenants.

As to compensation for crops, improvements, &c., when a mortgagee is in possession, see the Tenants Compensation Act, 1890 (53 & 54 Vict. c. 57).

Mortgagees' Remedies.

Bankruptcy notice.

P. 910, line 25.—An equitable mortgagee may issue a bankruptcy notice for his debt, although he brought an

action for foreclosure and obtained an order for sale, provided the sale has not actually taken place: *Ex parte Meston, Re Kelday*, W. N. 1888, p. 94, 36 W. R. 585, C. A.

Personal order for payment.

Where the plaintiff in a foreclosure action claims personal payment of the principal, he is generally entitled to an order for immediate payment: *Instone* v. *Elmslie*, 54 L. T. 730, 34 W. R. 592.

Period for redemption.

P. 912, line 1.—After *Nanny* v. *Edwards*, add *Bertlin* v. *Gordon*, W. N. 1886, p. 31.

Delivery of possession.

P. 912, line 13.—The Court has jurisdiction under R. S. C., Ord. XVIII., r. 2, in a foreclosure action to order delivery of possession as against the mortgagor, though not asked for in the writ or statement of claim: *Salter* v. *Edgar*, W. N. 1886, p. 47, 54 L. T. 374; *Keith* v. *Day*, 39 Ch. D. 452, C. A.; *Manchester & Liverpool Bank* v. *Parkinson* (No. 3), W. N. 1889, p. 27, 60 L. T. 258.

Infant.

P. 912, line 24.—After *Lewis* v. *Price*, add *Mellor* v. *Porter*, 25 Ch. D. 158.

Action for foreclosure and redemption.

As to the proper form of judgment in an action by a second mortgagee to redeem the first mortgagee and to foreclose the mortgagor, see *Hallet* v. *Furze*, 31 Ch. D. 312.

Sale in action for foreclosure

P. 914, line 17.—After *Wade* v. *Wilson*, add *Davies* v. *Wright*, 32 Ch. D. 220; *Merchant Banking Co. of London* v. *London & Hanseatic Bank*, W. N. 1886, p. 5, 55 L. J. Ch. 479; *Christy* v. *Van Tromp*, W. N. 1886, p. 111; *Western District Bank* v. *Turner*, 47 L. T. 433, 31 W. R. 113. The Court may give the conduct of the sale of mortgaged property to the mortgagor, though notice to pay off has been given to him and expired: *Brewer* v. *Square*, [1892] 2 Ch. 111.

Implied indemnity on postponement of charge.

P. 914, line 32.—Where a second mortgagee consented to postpone his charge to a further advance by the first mortgagee and, the mortgagor having become bankrupt, the property was sold by the first mortgagee for a price sufficient to satisfy the first mortgage but not to satisfy the subsequent charges, it was held that the second mortgagee might prove for the amount which he would have received out of the proceeds of sale if he had not postponed his charge on the ground of an implied promise by the bankrupt to indemnify

him against any loss resulting from the postponement: *Ex parte Ford, Re Chappell*, 16 Q. B. D. 305, C. A.

Following mortgagor's assets.

P. 915, line 30.—Where the mortgaged real estate of a deceased mortgagor proves insufficient, and the executors distribute the personal estate without making provision for the mortgage debt, they will not be allowed to set up such wrongful payments in order to claim the benefit of the Statute of Limitations so as to bar the right of the mortgagee to follow the mortgagor's assets: *Re Hyatt, Bowles* v. *Hyatt*, 38 Ch. D. 609. But such right of a mortgagee is a purely equitable right and will not be enforced where the mortgagees have assented to the distribution of the personal estate and considerable lapse of time has occurred: *Blake* v. *Gale*, 32 Ch. D. 571, C. A.

Costs of abortive sale.

P. 921, note (*hh*).—*Farrer* v. *Lacy, Hartland & Co.*, was affirmed, 31 Ch. D. 42. See also *Faithfull* v. *Woodley*, 43 Ch. D. 287.

Exercise of power of sale.

P. 923, line 6.—*Re Morton & Hallet* was followed in *Re Cunningham & Frayling*, [1891] 2 Ch. 567.

Debentures.

P. 924, line 4.—It has been held by *Kay*, J., that the statutory power of sale does not apply to debentures of a joint stock company, *Blaker* v. *Herts & Essex Waterworks Co.*, 41 Ch. D. 399.

Protection of purchasers.

P. 926, line 2.—After *Parkinson* v. *Hanbury*, add *Selwyn* v. *Garfit*, 38 Ch. D. 273, C. A.; as to waiver of notice to pay, see *Re Thompson & Holt*, 44 Ch. D. 492; as to the liability of mortgagees to furnish to a purchaser evidence of the subsistence of a security and other matters affecting the regularity of the sale where the mortgage deed (made 1818) contained no proviso exonerating a purchaser from inquiry: see *Re Edwards & Rudkin to Green*, 58 L. T. 789.

Conveyance.

P. 927, line 9.—An equitable mortgagee who sells under his statutory power under the Conveyancing Act, 1881, cannot under s. 21 of that Act convey the legal estate vested in the mortgagor: *Re Hodson & Howes' Contract*, 35 Ch. D. 668, C. A. If, however, the deed was made before 1882, an equitable mortgagee can convey the legal estate under Lord Cranworth's Act, notwithstanding the repeal of that Act by s. 71 of the Conveyancing Act, 1881: *Re Solomon and Meagher's Contract*, 40 Ch. D. 508.

P. 927, line 18.—A mortgagee whose security was in the form of a trust for sale, and who had entered and remained in possession for over twenty years was held to be able to make a good title and convey as an owner in fee, and it was held that the mortgagor had no right to the surplus of the purchase-money: *Re Alison, Johnson* v. *Mounsey*, 11 Ch. D. 284, C. A. Sale by mortgagee in possession.

Where the mortgagee was a lunatic, and it became necessary to exercise his power of sale, the Court refused to order his committee to sell and convey, but only directed him to sell, leaving the transfer of the legal estate to be dealt with on a subsequent application for a vesting order under the Trustee Act, 1850: *Re Harwood*, 35 Ch. D. 470, C. A. As to the power of the Court under s. 3 of that Act, to appoint a person to transfer a mortgage vested in a lunatic, and convey the property to the transferee: see *Re Peel*, 55 L. T. 554, 35 W. R. 81, C. A.; *Re Nicholson*, 34 Ch. D. 663, C. A. This section is now repealed by the Lunacy Act, 1890, but the jurisdiction is revived by s. 135 of that Act. Sale by committee of lunatic mortgagee.

P. 927, line 32.—A mortgagee who is unable to ascertain who are the persons entitled to surplus purchase-moneys, must invest the moneys for the benefit of such persons when ascertained, otherwise he will be liable to pay interest thereon at the rate of 4 per cent. per annum from the completion of the sale: *Charles* v. *Jones* (No. 2), 35 Ch. D. 544. Interest on surplus purchase-moneys.

P. 928, line 6.—A mortgagee is not liable to the mortgagor for selling at a price less than the full value of the property, provided he fairly endeavours to obtain a proper price: *Colson* v. *Williams*, W. N. 1889, p. 33, 61 L. T. 71, 58 L. J. Ch. 539; see also *Warner* v. *Jacob*, 20 Ch. D. 220. Sale at undervalue.

P. 928, line 19.—A mortgagee selling by auction is responsible for loss caused by incorrect description of the property in the particulars: *Tomlin* v. *Luce*, 43 Ch. D. 191, C. A. Misdescription of property.

P. 929, line 24.—A sale by a mortgagee to a company in which he is a shareholder will not be set aside merely because of the vendor's interest in the purchase, if the transaction is honest, and the price adequate: *Farrar* v. *Farrars, Limited*, 40 Ch. D. 395, C. A. Sale to company in which mortgagee is shareholder.

Appointment of receiver.

P. 932, *ad fin.*—After *Truman* v. *Redgrave*, add *Mason* v. *Westoby*, 32 Ch. D. 206; *Re Prytherch, Prytherch* v. *Williams*, 42 Ch. D. 590. A receiver appointed by the Court will not be appointed to be manager of a business carried on by the mortgagor, unless such business is included in the security, either expressly, or by necessary implication: *Whitley* v. *Challis*, [1892] 1 Ch. 64, C. A., and see cases there cited.

Occupation rent.

Where in a foreclosure action against a mortgagor in possession, an order had been made appointing a receiver and directing tenants to attorn and pay their rents to him, it was held, that the mortgagor being rightfully in possession was liable to pay rent for use and occupation of the premises from the date of demand by the receiver only: *Yorkshire Banking Co.* v. *Mullan*, 35 Ch. D. 125.

Chapter VI.—Rights of Third Persons.

Liability of assignee of lease.

P. 934, line 25.—After *Burnett* v. *Lynch*, add *Moule* v. *Garrett*, L. R. 7 Ex. 101.

Mortgage by underlease.

P. 934, line 31.—As to the effect, upon an underlease by way of mortgage, of a disclaimer by a trustee in bankruptcy of the leasehold interest of a bankrupt, see *sub tit.* Disclaimer, *ante*, pp. 125, *et seq.* As to whether mortgages of leaseholds should be by assignment or under lease, see *post*, p. 205.

Chapter VII.—Alienation by the Mortgagor.

Consolidation.

Rights of transferee same as transferor.

P. 940, line 5.—The right to consolidation being an equitable right, the ordinary incidents of equitable rights attach to it, and, accordingly, if several mortgages on different properties belonging to the same mortgagor are transferred by a mortgagee who has no right to consolidate them, the transferee can stand in no better position than his transferor; *Bird* v. *Wenn*, 33 Ch. D. 215.

Rights of second mortgagee of one estate.

In *Squire* v. *Pardoe*, 66 L. T. 243, 40 W. R. 100, C. A., the Court of Appeal held that a second mortgagee of a property was entitled to redeem that mortgage as against the first mortgagee thereof, without also redeeming a mortgage in

favour of such last-mentioned mortgagee, secured on another estate belonging to the same mortgagor.

Consolidation against surety.

P. 940, line 22.—The right to consolidate prevails against an undisclosed surety: *Re Toogood's Legacy Trusts*, W. N. 1889, p. 73, 61 L. T. 19.

Assignee of equity of redemption.

P. 940, line 28.—*Beevor* v. *Luck* is not to be relied upon; see *Jennings* v. *Jordan*, 6 App. Cas. 698, at 701; see also *Harter* v. *Colman*, 19 Ch. D. 630.

Costs.

P. 941, line 10.—*Clapham* v. *Andrews* is overruled on the question of costs by *De Caux* v. *Skipper*, 31 Ch. D. 635, C. A.

Notice to pay off one mortgage.

Notice under s. 20 of the Conveyancing Act, 1881, to pay off one of several mortgages executed by the same mortgagor will not necessarily deprive the mortgagee of his right to consolidate if such right is expressly reserved so as to exclude s. 17 of the Act: *Griffith* v. *Pound*, 45 Ch. D. 553.

There cannot be any consolidation of two securities, one of which has ceased to exist: *Re Gregson, Christison* v. *Bolam*, 36 Ch. D. 223, 226; see *Re Raggett, Ex parte Williams*, 16 Ch. D. 117, C. A.

Tacking.

Right to tack.

P. 944, line 19.—After *Wrightson* v. *Hudson*, add *Hosking* v. *Smith*, 13 App. Cas. 582.

Notice of prior incumbrance.

P. 945, line 11.—After *London & County Bank* v. *Radcliffe*, add *Bradford Banking* v. *Briggs*, 12 App. Cas. 29; *Union Bank of Scotland* v. *National Bank of Scotland*, 12 App. Cas. 53.

P. 945, line 35.—After *Belchier* v. *Renforth*, add *Atherley* v. *Barnett*, W. N. 1885, p. 70, 52 L. T. 736, 33 W. R. 779; *Taylor* v. *Russell*, [1892] A. C. 244.

No tacking in Yorkshire.

P. 945, note (*e*).—Priority by tacking is now abolished in Yorkshire, see s. 16 of the Yorkshire Registries Act, 1884, set out Vol. VI., p. 13.

Notice immaterial.

P. 946, line 21.—After *Robinson* v. *Davison*, add *Taylor* v. *Russell*, [1892] A. C. 244.

Constructive trust.

P. 947, line 9.—After *Mumford* v. *Stohwasser*, add *Harpham* v. *Shacklock*, 19 Ch. D. 207, C. A., but compare *Taylor* v. *Russell*, *supra*.

Trustee for mortgagor.

As to the fiduciary relation in which a satisfied mortgagee stands to his mortgagor, see *Magnus* v. *Queensland National Bank*, 37 Ch. D. 466, C. A. On the principle that a mortgagor cannot by taking an assignment from a purchaser for value squeeze out his own incumbrancers, a mortgagee who stands in a fiduciary position to the mortgagor cannot tack a subsequent incumbrance to his mortgage so as to oust the intervening incumbrancers of the mortgagor: *Ledbrook* v. *Passman*, W. N. 1888, p. 156, 59 L. T. 306, 57 L. J. Ch. 855.

No tacking of security which has ceased.

There can be no tacking of two securities, one of which has ceased to exist: *Re Gregson, Christison* v. *Bolam*, 36 Ch. D. 223, 226.

Title deeds.

P. 947, line 33.—A first mortgagee may be deprived of his right to tack by neglecting to obtain possession of the title-deeds: *Garnham* v. *Skipper* (No. 2), 53 L. T. 940, 34 W. R. 135, 55 L. J. Ch. 263 (stated *post*, p. 202).

Merger of Securities.

Intention to keep mortgage alive.

P. 949, line 25.—After *Bell* v. *Sunderland Building Society*, add *Re Cork Harbour Docks Co.*, 17 L. R. Ir. 515, C. A.; *Re Pride, Shackell* v. *Colnett*, [1891] 2 Ch. 135.

Purchase by person in fiduciary position.

P. 950, line 27.—As to a purchase at an undervalue of a bankrupt's interest by his solicitor, see *Luddy's Trustee* v. *Peard*, 33 Ch. D. 500.

Notice to Trustees.

Knowledge of incumbrances acquired *aliunde* by trustees.

P. 953, line 24.—After *Lloyd* v. *Banks*, add *Re Wyatt, White* v. *Ellis*, [1892] 1 Ch. 188, C. A. Where notices have been given to trustees by several incumbrancers, the time at which the trustees obtained *aliunde* knowledge of the incumbrances will not determine the order in which the incumbrances are to rank: *Arden* v. *Arden*, 29 Ch. D. 702.

Constructive notice.

P. 953, line 20.—Having regard to the provisions of s. 3, ss. 1 (ii.) of the Conveyancing Act, 1882 (set out *sub tit.* PURCHASE DEEDS, Vol. V., p. 160), a mortgagee of trust property who has not himself, at the time of making his advance, any knowledge of a prior charge on the property, and

who gives notice of his charge to the trustees, will not be deemed to have constructive notice of a prior charge, so as to be deprived of his priority by reason of the existence of the prior charge having come to the knowledge of his solicitor on some former occasion, in a transaction other than the particular transaction in which the solicitor acted as solicitor for the mortgagee: *Re Cousins*, 31 Ch. D. 671.

P. 954, line 12.—The question as to the duties and liabilities of trustees as regards answering inquiries of an intending purchaser or mortgagee of the interest of their *cestui que trust* has been very fully considered by the Court of Appeal in the recent case of *Low* v. *Bouverie*, [1891] 3 Ch. 82, C. A.

In that case it was held that a trustee is under no obligation to answer the inquiries of his *cestui que trust* or of a stranger who is about to deal with the *cestui que trust* as to charges effected by the *cestui que trust*, or as to notices of such charges received by the trustee. Their lordships were of opinion that having regard to the decision in *Derry* v. *Peek*, 14 App. Cas. 337, *Burrowes* v. *Lock* can now be supported only on the ground of estoppel, and that *Shire* v. *Croucher* must be regarded as overruled. See also *Re Wyatt, White* v. *Ellis*, [1892] 1 Ch. 188, C. A.; *Elkington* v. *Hurter*, [1892] 2 Ch. 452, at p. 455, per *Romer*, J.

P. 954, *ad fin.*—After *Jones* v. *Jones*, add *Union Bank of London* v. *Kent*, 39 Ch. D. 238, C. A.; *Re Richards, Humber* v. *Richards*, 45 Ch. D. 589. Real estate.

After *Malcolm* v. *Charlesworth*, add *Arden* v. *Arden*, 29 Ch. D. 702. Proceeds of sale of realty.

As to how far the doctrine of *Dearle* v. *Hall* applies to equitable mortgages of shares in companies, see *Société Générale de Paris* v. *Walker*, 11 App. Cas. 20; *Bradford Banking Co.* v. *Briggs*, 12 App. Cas. 29. Shares.

Priority by Possession of Deeds.

P. 956, line 14.—The reference to *Northern Counties, &c., Insurance Co.* v. *Whipp* ought to be 26 Ch. D. 482. Add *Manners* v. *Mew*, 29 Ch. D. 725, where the mortgagor made excuses for not delivering up the deeds, and *Flinn* v. *Pountain*, W. N. 1889, p. 32, 60 L. T. 484, 37 W. R. 443, 58 L. J. Ch. Effect of absence of deeds.

Priority as between equities.

389. The rule that the Court will not postpone a legal mortgagee on the ground of mere carelessness or want of prudence has been said not to apply with equal force as between two equitable claims: *National Provincial Bank of England* v. *Jackson*, 33 Ch. D. 1, C. A. See *Farrand* v. *Yorkshire Banking Co.*, 40 Ch. D. 182. See further as to negligence as affecting priority as between several equitable incumbrancers: *French* v. *Hope*, 56 L. T. 57, 56 L. J. Ch. 363; *Re Vernon, Ewens & Co.*, 33 Ch. D. 402, C. A.; *Union Bank of London* v. *Kent*, 39 Ch. D. 238, C. A.; *Carritt* v. *Real and Personal Advance Co.*, 42 Ch. D. 263; *Cook* v. *Bramwell*, W. N. 1890, p. 72, C. A.; *Re Richards, Humber* v. *Richards*, 45 Ch. D. 589.

Neglect to inquire as to deeds.

P. 957, line 19.—After *Worthington* v. *Morgan*, add *Re Wyatt, White* v. *Ellis*, [1892] 1 Ch. 188, C. A. So where a legal mortgagee failed to obtain the title deeds, and subsequently, without making any further inquiries, made a further advance, he was postponed as regards the subsequent advance, to an equitable mortgagee who having no notice of the legal mortgage had obtained the deeds: *Garnham* v. *Skipper* (No. 2), 53 L. T. 940, 34 W. R. 135, 55 L. J. Ch. 263.

Chapter VIII.—Alienation by the Mortgagee.

Transfer in lieu of reconveyance.

P. 963, line 7.—That the rule laid down in *Teevan* v. *Smith* is still in force, notwithstanding s. 12 of the Conveyancing Act, 1882, has been incidentally recognised by *Stirling*, J., in *Kinnaird* v. *Trollope* (No. 1), 39 Ch. D. 636, at p. 646. Indeed the effect of the section seems to be to give legislative confirmation to the decision in *Teevan* v. *Smith*, so far as it laid down that the expression "mortgagor" in the principal Act means the person who has, in priority to all other persons interested, the right to call upon the first mortgagee to assign the mortgage; but to leave unaffected the decision that the consent of prior mesne incumbrancers is necessary to enable a subsequent mesne incumbrancer, or the mortgagor himself, as the case may be, to call for a transfer in lieu of reconveyance.

Lien on shares.

P. 963, line 13.—The right of a mortgagor to require a

transfer of the security to his nominee instead of reconveyance applies to the case of a lien of a company on shares for a debt due from the shareholder: *Everitt* v. *Automatic Weighing Machine Co.*, [1892] 3 Ch. 506.

Devolution of Mortgage Estates.

Several mortgagees.

P. 964, line 36.—After *Vicars* v. *Cowell*, add *Steeds* v. *Steeds*, 22 Q. B. D. 537, at p. 541, where the principle of the cases cited was applied to the case of several joint obligees of a bond.

Copyholds.

P. 965, line 38.—Sect. 30 of the Conveyancing Act, 1881, has been partially repealed by the Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 45, which received the royal assent on the 16th September, 1887, and enacts as follows:—

"The thirtieth section of the Conveyancing and Law of Property Act, 1881, shall not apply to land of copyhold or customary tenure vested in the tenant on the court rolls of any manor upon any trust or by way of mortgage."

Where, as is usually the case, the mortgagee is not admitted so as to vest the land in him as tenant on the rolls, it seems that s. 30 of the Act of 1881 will apply, and that his personal representatives are the proper persons to reconvey. Where the legal estate in copyholds was outstanding in the infant heir of an admitted mortgagee, *Stirling*, J., made an order vesting in the mortgagee's executors the legal estate: *Re Franklyn's Mortgages*, W. N. 1888, p. 217.

It was held by *North*, J., in *Re Mills' Trusts*, 37 Ch. D. 312, that the effect of the passing of the Copyhold Act, 1887, was that thereupon s. 30 of the Act of 1881 ceased to have further application to the devolution of the legal estate in copyholds held on trust or by way of mortgage, and accordingly that, in the case of a trustee or mortgagee who has died between the 1st January, 1882, and the 16th September, 1887, any actual disposition by his executors made between those dates would be valid under s. 30; but that, if no such disposition had been made, the executors would have no longer any power to deal with the property, and the devolution of the estate must be treated as if the Conveyancing Act, 1881, had never passed.

This decision was affirmed 40 Ch. D. 14, but on other grounds, which rendered it unnecessary for the Court of Appeal to consider this point.

If there is no personal representative (see *Re Pilling's Trusts*, 26 Ch. D. 432) a vesting order will be necessary: *Re Rackstraw's Trusts*, W. N. 1885, p. 73, 52 L. T. 612, 33 W. R. 559; *Re Williams' Trusts*, 36 Ch. D. 231.

V. & P. Act, 1874, s. 4.

P. 966, lines 6 to 13.—The repeal of s. 4 of the Vendor and Purchaser Act, 1874, leaves the repealed section operative as regards deaths between the 7th of August, 1874, and the 31st of December, 1881. The text in this place should be corrected accordingly.

Bar of Remedy by Lapse of Time.

Evidence.

P. 967, line 20.—As to the admissibility of evidence of payment of interest to take a case out of the Statutes of Limitations, see *Newbould* v. *Smith*, 33 Ch. D. 127, C. A.: affirmed on other grounds, 14 App. Cas. 423.

Revivor of statute-barred debt.

As to revivor of a debt by part payment for the purpose of renewing the liability after the debt had become barred, see *Re Lane, Ex parte Gaze*, 23 Q. B. D. 74.

Collateral bond.

P. 968, line 30.—Sect. 8 of the Real Property Limitation Act, 1874, does not apply to a bond by a surety for payment of a mortgage debt secured on land of another person: *Re Powers, Lindsell* v. *Phillips*, 30 Ch. D. 291, C. A.; see also *Re Frisby, Allison* v. *Frisby*, 43 Ch. D. 106, C. A.

P. 968, *ad fin.*—In the case of an equitable charge on a contingent reversionary interest, time does not begin to run to bar a foreclosure action until the interest falls into possession: *Hugill* v. *Wilkinson*, 38 Ch. D. 480; *Re Hancock, Hancock* v. *Berrey*, W. N. 1888, p. 138, 59 L. T. 197, 36 W. R. 710, 57 L. J. Ch. 793.

Chapter IX.—Form of Mortgage Securities.

Mortgages of Freeholds.

Receipt in deed or endorsed.

P. 973, note (*c*).—In *Bickerton* v. *Walker*, 31 Ch. D., 151, C. A., it was held that a transferee of a mortgage, who

had no notice that the mortgagor had not received the full amount of the advance, was entitled to rely on the acknowledgment in the body of the deed, and on the receipt endorsed thereon, which were for the full amount. See also *Gordon* v. *James*, 30 Ch. D. 249, C. A.

Mortgages of Leaseholds.

Whether mortgage should be by demise or by assignment.

The effect of recent legislation and decisions appears to affect in some respects the incidents formerly considered to attach to taking mortgages of leaseholds by demise, inasmuch as if the landlord proceeds to enforce his right of re-entry or forfeiture in any of the events whereby such power becomes ordinarily exercisable, viz., non-payment of rent, breach of lessee's covenants or stipulations, or bankruptcy of the lessee, the mortgagee by demise will be reduced to the alternative of accepting the position of an assignee of the lease, with the consequent liabilities, or of giving up the benefit of his security.

By the Conveyancing Act, 1892 (55 & 56 Vict. c. 13), sect. 4, it is enacted as follows:—

Power of Court to protect under-lessees on forfeiture of superior leases.

"Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the Court in the circumstances of each case shall think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease."

Disclaimer of lease by trustee in bankruptcy of mortgagor.

Moreover, in case the mortgagor should become bankrupt, and the trustee in the bankruptcy should disclaim the lease, a mortgagee by demise will by virtue of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55, sub-s. (6), be excluded from

all interest in, and security upon the mortgaged property, unless he will accept an order vesting the property in him, subject to the same liabilities and obligations as the bankrupt was subject to under the lease at the date when the bankruptcy petition was filed: see *Re Parker, Ex parte Turquand*, 14 Q. B. D. 405; *Re Cock, Ex parte Shilson*, 20 Q. B. D. 343; *Re Finley, Ex parte Clothworkers Co.*, 21 Q. B. D. 475, C. A. See further on this point, *ante, sub tit.* DISCLAIMER, *ante*, pp. 127, 128. And such liabilities and obligations cannot be escaped by an assignment of the underlease to a trustee for the mortgagee before leave to disclaim is applied for by the bankruptcy trustee: *Re Smith, Ex parte Hepburn*, 25 Q. B. D. 536, C. A. The provisions of the section do not apply to mortgagees by assignment of leaseholds: *Re Gee, Ex parte Official Receiver*, 24 Q. B. D. 65.

It will be observed that a mortgage by demise still confers on the mortgagee the advantage of not being rendered directly subject (as in the case of a mortgage by assignment) to the liabilities and obligations of a lessee, and that the effect of the enactments above referred to is to give to the mortgagee the option of accepting those liabilities and obligations, or (if he thinks it preferable so to do) of abandoning his security and relying on the covenant for payment and proof in bankruptcy for the debt.

Precautions to be observed by mortgagee of leaseholds.

It is obvious that a mortgage of leaseholds, whether by demise or assignment, is a security not altogether free from risk or otherwise satisfactory, unless the property is held at a low rent and not subject to onerous covenants. Except where this is the case, a mortgagee should insist on seeing all receipts for rent, and from time to time ascertain that the covenants are being performed by the lessee-mortgagor, and, failing this, should call in the money. It may be advisable to insert in the mortgage deed a clause making the statutory power of sale exercisable immediately on failure to produce any receipt for payment of rent within a specified number of days after each such payment has becomes due, or upon breach of any of the lessee's covenants.

Attornment Clause.

Relation of landlord and

P. 982, line 11.—After *Ex parte Williams*, add *Ex parte*

Voisey, Re Knight, 21 Ch. D. 442; *Ex parte Harrison, Re Peake*, 13 Q. B. D. 753. tenant created by attornment.

P. 983, line 21.—In *Hall* v. *Comfort*, 18 Q. B. D. 11, Lord *Coleridge*, C.J., and *Manisty* and *Stephen*, JJ., held, that attornment clauses in mortgages of land are not within the Bills of Sale Acts, 1878 and 1882. But this decision was disapproved of by the Court of Appeal in *Re Willis, Ex parte Kennedy*, 21 Q. B. D. 384, where it was held that the saving proviso at the end of s. 6 of the Act of 1878 applies only to cases where the mortgagee has entered into possession and demised them to the mortgagor, not where the demise is created by the mortgage deed itself. See also *Green* v. *Marsh*, [1892] 2 Q. B. 330, C. A. In *Mumford* v. *Collier*, 25 Q. B. D. 279, Lord *Coleridge*, C.J., and *Wills*, J., held that attornment clauses, though invalid so far as they give power to distrain personal chattels, are of effect so far as they in other respects create the relation of landlord and tenant between mortgagee and mortgagor, *e.g.*, so as to enable the mortgagee to issue a writ specially endorsed with a claim for recovery of land under R. S. C., Order III., r. 6, and Order XIV., r. 1. See also as to the position of a mortgagee with an attornment clause after an order for winding up a mortgagor-company, *Re Lancashire Cotton Spinning Co., Ex parte Cornelly*, 35 Ch. D. 656, C. A. Effect of Bills of Sale Acts on attornment clauses.

Chapter X.—Stamps on Mortgages.

Pp. 988 to 991.—As to stamps on mortgages, reconveyances, and transfers of mortgage, see *sub tit.* Stamps, *post*.

PRECEDENTS AND NOTES.

Precedent II.—Mortgage in Fee to One.

P. 995, note (*h*).—In *Mellersh* v. *Brown*, 45 Ch. D. 225, a mortgage deed contained a covenant to pay principal and interest on a specified day, but no covenant to pay subsequent Covenant for payment of interest.

interest; the mortgagee having obtained a usual decree for foreclosure, it was held by *Kay*, J., that the mortgagor could not be allowed to redeem except on payment of interest at the full rate specified in the mortgage deed; his lordship pointed out that the decision of the Court of Appeal in *Re Roberts*, was given not in a foreclosure action, but in an action on the covenant to pay interest, so that the question was as to the amount of damages to be allowed, and that *Cotton*, L.J., had intimated that the result might have been different if redemption had been asked for in that case.

Precedent IV.—Mortgage in Fee to Several.

Attornment.

P. 1004, note (*z*).—For another form of attornment clause, see *Daubuz* v. *Lavington*, 13 Q. B. D. 347. As to the effect of the Bills of Sale Acts on attornment clauses, see *ante*, p. 207.

Precedent X.—Mortgage of Leaseholds by Demise.

Demise or assignment.

P. 1015, note (*r*).—See the question as to whether a mortgage of leaseholds should be by assignment or demise considered, *ante*, p. 205.

Precedent XVII.—Mortgage to Secure Future Advances.

Notice of intervening incumbrance.

P. 1028, note (*h*).—After *London & County Banking Co.* v. *Ratcliffe*, add *Bradford Banking Co.* v. *Briggs*, 12 App. Cas. 29; *Union Bank of Scotland* v. *National Bank of Scotland*, 12 App. Cas. 53.

Precedent XXVI.—Mortgage by Committee of Lunatic.

Mortgage to pay debts of ancestor.

P. 1051, note (*x*).—As to a mortgage under the sanction of the Court of the real estate of a lunatic heiress in order to pay the debts of her ancestor: see *Re Fox*, 33 Ch. D. 37,

C. A. In that case the Court declined to authorise the committee to enter into any covenant on behalf of the lunatic. The application in this case was made under s. 116 of the Lunacy Act, 1853, which Act has since been repealed by the Lunacy Act, 1890 (53 Vict. c. 5); see the corresponding section (s. 117) of the present Act.

PRECEDENTS XXXVII. TO XLII.—MORTGAGES OF LIFE POLICIES.

Pp. 1082 to 1100.—It may be advisable in mortgages of policies of life assurance either alone or together with other property to insert a proviso to the following effect:— Proviso that sale of policy may be by surrender to office.

"PROVIDED ALWAYS that a sale by the mortgagee under his power in that behalf by virtue of these presents of any policy for the time being subject to the security intended to be hereby effected may be made by way of surrender to the office by which such policy was granted or otherwise as the mortgagee shall think fit."

Also, if the mortgage deed contains a proviso for reduction of interest on punctual payment, after providing that the mortgaged property shall be charged with payment of all monies expended by the mortgagee in keeping up policies, &c., with interest thereon. (See *e.g.* P. 1095), add—

"And further that such interest shall not be subject to reduction under the proviso hereinbefore contained for reduction of interest on punctual payment." Reduction of interest.

PRECEDENT XLVII.—BILL OF SALE OF PERSONAL CHATTELS.

Pp. 1113 to 1117.—This form, so far as it in any way deviates, by way of addition or otherwise, from the statutory form, must be adopted with caution and with reference to the numerous decisions which, since the publication of this volume, have been given (see *ante*, pp. 172 *et seq.*). The precedent has been checked, and certain omissions, which General remarks.

are referred to below, are necessary, but it is believed that the remaining clauses will not vitiate the bill so far as any reliance can be placed upon the decisions given up to the present time.

After-acquired chattels.

P. 1114, lines 8 to 14, and note (*p*).—The words of assignment of future chattels generally, given in brackets in the text, must be omitted. The statement in this note (which was based upon the decision of the Court of Appeal in *Crosser* v. *Maxwell*, here referred to, and which decision was itself based upon *Roberts* v. *Roberts*, 13 Q. B. D. 794, C. A., can no longer be treated as law, since the judgment of the House of Lords, in *Thomas* v. *Kelly*, 13 App. Cas. 506, where it was held that a bill of sale which purports to assign after-acquired property is altogether void.

Date of payment.

P. 1114, note (*q*).—After *Sibley* v. *Higgs*, add *Mackay* v. *Merritt*, 34 W. R. 433; *Hughes* v. *Little*, 18 Q. B. D. 32, C. A.

Omission.

P. 1115, lines 3 to 9.—Omit the words from "and observe," &c., to "or placed." This clause appears dangerous as incorporating covenants and conditions by reference to another instrument; see *Lee* v. *Barnes*, 17 Q. B. D. 77.

Rate of interest.

P. 1115, note (*q*).—In *Lumley* v. *Simmons*, 34 Ch. D. 698, C. A., a bill of sale was upheld which stated the rate of interest as "1*s.* per £1 per month." See further as to interest, *ante*, p. 182.

Power to seize in certain events.

P. 1116, note (*t*).—The remarks in this note must now be read in connection with the later decisions referred to, *ante*, p. 177. It would seem that, if a bill of sale contains a power to seize in an event not authorised by the Act, the insertion of a proviso that the goods shall not be liable to seizure for any other cause than those specified in s. 7 of the Act will not render the deed valid: *Furber* v. *Cobb*, 18 Q. B. D. 494, C. A.

Omission.

P. 1117, lines 14, 15.—Omit the words "or otherwise incurred in relation to this security," see *Calvert* v. *Thomas*, 19 Q. B. D. 204, C. A.

Precedent XLVIII.—Colliery and Machinery.

Inclusion of movable machinery and chattels.

Pp. 1117 to 1125.—It is obvious from the remarks made with reference to the statutable form of a bill of sale (*ante*, pp. 181, *et seq.*), that, if it is intended to include in a security for a loan movable machinery or other chattels together with land, the prudent course will be to take an assignment of the chattels by a separate instrument following the statutable form of a bill of sale and registered as such.

Precedent L.—Legacy or Share of Residue.

Charging order.

P. 1130, note (*n*).—A judgment creditor cannot, by obtaining a charging order upon a fund in Court belonging to the debtor, gain priority over a prior mortgagee of the fund who has not obtained an order: *Re Bell, Carter* v. *Stadden*, W. N. 1886, p. 46, 54 L. T. 370, 34 W. R. 363.

Precedent LIII.—Mortgage of Letters Patent.

Mortgagee of share.

P. 1141, note (*o*).—As to the rights of a mortgagee of a share in a patent who is also co-owner of another share, see *Steers* v. *Rogers*, [1893] A. C. 232.

Precedent LIV.—Mortgage Debenture to Bearer.

Uncalled capital.

P. 1147, note (*x*).—As to the inclusion in debentures or mortgages of a company, of capital for the time being uncalled, see *Howard* v. *Patent Ivory Manufacturing Co., Re Patent Ivory, &c., Co.*, 38 Ch. D. 156, 169; *Re Pyle Works*, 44 Ch. D. 534, C. A.

Precedent LVIII.—Defeasance to Accompany Transfer of Debentures and Shares.

Reputed ownership.

P. 1166, note (*k*).—The decision of the Court of Appeal in *Colonial Bank* v. *Whinney*, was reversed by the House of Lords, who held that shares are "things in action" within the

meaning of the exception in the Bankruptcy Act, 1883, s. 44, sub-s. iii.: *Colonial Bank* v. *Whinney*, 11 App. Cas. 426.

Insolvent transferee.

As to refusal of a company to register a transfer of shares on the ground that the transferee was insolvent, see *Reg.* v. *Lambourne Valley Rail. Co.*, 22 Q. B. D. 462.

Precedent LXI.—Share in Partnership Business.

Inclusion of partnership chattels

P. 1170, note (*x*).—This note is erroneous. The plant and chattels of the partnership need not be excepted from the mortgage, as the charge will not give to the mortgagee the right to take possession of any of the chattels in their entirety, but merely a right to have accounts taken. The inclusion of a share in the chattels will not therefore bring the mortgage within the mischief of the Bills of Sale Acts: see *Re Bainbridge, Ex parte Fletcher*, 8 Ch. D. 218; see also s. 31 of the Partnership Act, 1890 (53 & 54 Vict. c. 39), set out *post*, p. 239.

Precedent LXII.—Memorandum of Deposit of Deeds.

Order for sale.

P. 1172, note (*z*).—After *Oldham* v. *Stringer*, add *Green* v. *Biggs*, W. N. 1885, p. 128, 52 L. T. 680.

Precedent LXXII.—Statutory Reconveyance.

Building society's receipt.

P. 1190, note (*p*).—After *Fourth City, &c., Building Society* v. *Williams*, add *Hosking* v. *Smith*, 13 App. Cas. 582; see also *ante*, pp. 189, 190.

Mortgagee, when bound to reconvey.

P. 1191, note (*p*).—A mortgagee is not obliged to reconvey or to deliver up the deeds, until he has been actually paid off: *Lacey* v. *Waghorne*, 59 L. T. 208.

Stamp.

P. 1192, note (*q*).—As to stamps on reconveyances, see *sub tit.* Stamps, *post*.

Precedent LXVIII.—Statutory Transfer of Mortgage.

Stamp.

P. 1199, note (*d*).—As to stamps on transfers of mortgages, see *sub tit.* Stamps, *post*.

Precedent XCI.—Defeasance to Warrant of Attorney.

Interest.

P. 1219, note (*a*).—The decision in *Popple* v. *Sylvester*, applies only where there is a covenant to pay interest at a specified rate, "so long as any money shall remain owing on the security" of the deed, or words to that effect; if the covenant is in the usual form, it will merge in the judgment: *Ex parte Fewings, Re Sneyd*, 25 Ch. D. 338; *Arbuthnot* v. *Bunsilall*, W. N. 1890, p. 37, 62 L. T. 234.

Precedent XCIX.—Memorandum of Transfer of Mortgage by Deposit of Deeds.

Transfer to be in writing.

P. 1233, note (*p*).—After *Re Richardson*, add *Re Hancock*, *Hancock* v. *Berrey*, W. N. 1888, p. 138, 59 L. T. 197, 36 W. R. 710, 57 L. J. Ch. 793.

MORTMAIN.

PRELIMINARY DISSERTATION.

The Mortmain and Charitable Uses Acts, 1888 and 1892.

Mortmain, &c., Act, 1888.

Pp. 2 to 23.—The statutes 9 Geo. II. c. 26; 24 & 25 Vict. c. 9; 25 & 26 Vict. c. 27; 27 & 28 Vict. c. 13; 29 & 30 Vict. c. 57; 31 & 32 Vict. c. 44, ss. 1, 2; 35 & 36 Vict. c. 24, s. 13 (all of which are set out or referred to in these pages); as also the earlier Acts relating to charitable uses, viz., 7 Ed. I., *de viris Religiosis;* 13 Ed. I. c. 32; 18 Ed. III. c. 3; 15 Ric. II. c. 5; 23 Hen. VIII. c. 10; 43 Eliz. c. 4; and 7 & 8 Will. III. c. 37, are repealed by the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), which is mainly a consolidating statute, and, so far as it introduces any alterations, is not retrospective in its operation. The provisions of the Act of 1888 are fully considered, with references to the decisions thereon up to the end of 1889 in Vol. VI., pp. 867, *et seq.*

Mortmain, &c., Act, 1892.

Sect. 6 of the Act of 1888, containing provisions as to assurances for public parks, elementary schools, or public museums, except so much of sub-s. (2) of that section as provides that assurances by deed must be executed not less than twelve months before the death of the assuror is now, by the Mortmain and Charitable Uses Amendment Act, 1892 (55 Vict. c. 11), extended to assurances by deed to any "local authority" as defined by the amending Act.

Deed avoided for want of enrolment, &c.

P. 10, line 22.—After *Sweeting* v. *Sweeting*, add *Churcher* v. *Martin*, 42 Ch. D. 312. See also *Webster* v. *Southey*, 36 Ch. D. 9.

Extent of Act.

P. 12, line 11.—After *Whicker* v. *Hume*, add *Jex* v. *McKinney*, 14 App. Cas. 77, P. C.

Foreign land.

P. 12, *ad fin.*.—After *Beaumont* v. *Oliviera*, add *Re Arnold*, *Ravenscroft* v. *Workman*, 37 Ch. D. 637.

P. 15, line 29.—After *Luckraft* v. *Pridham*, add *Webster* v. *Southey*, 36 Ch. D. 9 at p. 22. Licence in Mortmain.

P. 17, line 31.—*Burnaby* v. *Bursby* was questioned by *Kay*, J., in *Webster* v. *Southey*, *supra*, where it was held that a lease of land granted for the purpose of erecting a workhouse thereon was a lease for charitable uses. As to the exemption of gifts for working-class dwellings from the Act of 1888, see the Working Classes Dwellings Act, 1890 (53 & 54 Vict. c. 16). Poorhouse.

P. 22, line 5.—As to purchases by corporations, see further *sub tit.* PURCHASE DEEDS, Vol. V., pp. 84 to 89. Purchases by corporations.

WHAT PROPERTY MAY BE GIVEN TO CHARITY.

P. 24, line 37.—The decision in *Re Christmas, Martin* v. *Lacon*, was reversed on appeal (see Addenda to Vol. IV.); but in *Re David, Buckley* v. *Royal National Lifeboat Institution*, 43 Ch. D. 27, the Court of Appeal, affirming the decision of *North*, J. (cited Vol. VI., p. 868), held that certain bonds of Harbour Trustees specifically assigning bridge-tolls constituted interests in land and could not be given to charity. Harbour tolls.

P. 25, line 18.—After *Chandler* v. *Howell*, add *Re Yerbury's Estate, Ker* v. *Dent*, 62 L. T. 55. Railway debentures.

P. 25, line 20.—In *Re Parker, Wignall* v. *Park*, [1891] 1 Ch. 682, *Stirling*, J., held that a mortgage by a municipal corporation of its "rents, rates, and waterworks," was a mortgage of the general undertaking, and that the mortgage debt was pure personalty bequeathable to charity. Mortgage of waterworks by corporation.

So also mortgages charging the borough fund of a municipal corporation: *Re Thompson, Bedford* v. *Teal*, 45 Ch. D. 161, C. A. But consolidated stock of the Manchester Corporation charged upon the "City rate, and all landed or other property" of the corporation was held by *Kay*, J., to be impure personalty: *Re Holmes, Holmes* v. *Holmes* (No. 2), W. N. 1890, p. 169, 63 L. T. 477, 60 L. J. Ch. 267. Mortgages on borough funds.

P. 30, line 37.—After *Dent* v. *Allcroft*, add *Re Goldsmid, Mocatta* v. *Att.-Gen.*, W. N. 1889, p. 196. "Establishment" of school.

P. 34, line 8.—In *Re Hendry, Watson* v. *Blakeney*, W. N. 1887, p. 93, 56 L. T. 908, 35 W. R. 730, it was held that a gift of residue comprising impure personalty to be Church Building Act, 43 Geo. III. c. 108.

applied in providing (among other things) a church clock, was a good gift under 43 Geo. III. c. 108, the sum required being £200, and such gift might be paid without abatement. A gift for keeping in repair a churchyard is within the Act: *Re Vaughan, Vaughan* v. *Thomas*, 33 Ch. D. 187. The disability attaching to married women under this Act is not removed by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75): *Re Smith's Estate, Clements* v. *Ward*, 35 Ch. D. 589.

Doctrine of Cy-près.

P. 38.—In the following recent cases testamentary gifts of personalty have been applied cy-près on the ground that, though particular objects mentioned by testators failed, the main and substantial purpose of the respective gifts was charity generally: *Pease* v. *Pattinson*, 32 Ch. D. 154; *Biscoe* v. *Jackson*, 35 Ch. D. 460, C. A.; *Re Richardson's Will*, 58 L. T. 45; *Re Davis' Trusts*, 61 L. T. 430; *Re Slevin, Slevin* v. *Hepburn*, [1891] 2 Ch. 236, C. A.

In the following cases it was held that no intention of general charity appeared, and that the gifts lapsed: *Re White's Trusts*, 33 Ch. D. 449; *Re Taylor, Martin* v. *Freeman*, W. N. 1888, p. 33, 58 L. T. 538; *Re Randell, Randell* v. *Dixon*, 38 Ch. D. 213; *Re Joy, Purday* v. *Johnson*, W. N. 1888, p. 238; 60 L. T. 175.

The Mortmain, &c., Act, 1891.

The law relating to testamentary dispositions in favour of charity has been materially altered by the Mortmain and Charitable Uses Act, 1891, which is as follows:—

54 & 55 VICT. c. 73.

"An Act to amend the Mortmain and Charitable Uses Act, 1888, and the Law relating to Mortmain and Charitable Uses.

[*5th August*, 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Mortmain and Charitable Uses Act, 1891.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Definition of "land."
51 & 52 Vict. c. 42.

3. 'Land' in the Mortmain and Charitable Uses Act, 1888, and in this Act, shall include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land; and the definition of land contained in the Mortmain and Charitable Uses Act, 1888, is hereby repealed.

Meaning of "assurance."

4. In this Act the word 'assurance' shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888.

Land assured by will for a charitable purpose to be sold.

5. Land may be assured by will to or for the benefit of any charitable use, but, except as herein-after provided, such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator, or such extended period as may be determined by the High Court, or any judge thereof sitting at chambers, or by the Charity Commissioners.

Land after expiration of time limited for sale to be sold by order of Charity Commissioners.

6. So soon as the time limited for the sale of any lands under any such assurance shall have expired without completion of the sale of the land, the land unsold shall vest forthwith in the official trustee of charity lands, and the Charity Commissioners shall take all necessary steps for the sale or completion of the sale of such land to be effected with all reasonable speed by the administering trustees for the time being thereof, and for this purpose the said Commissioners may make any order under their seal directing such trustees to proceed with the sale or completion of the sale of the said land or removing such trustees and appointing others, and may provide by any such order for the payment of the proceeds of sale to the official trustees of charitable funds in trust for the charity, and for the payment of the costs and expenses incurred by the said administering trustees in or connected with such sale, and every such order shall be enforceable by the same means and be subject to the same provisions as are applicable under the Charitable Trusts Act, 1853, and the Acts amending the same, respectively, to any orders of the said Commissioners made thereunder.

16 & 17 Vict. c. 137.

Personal estate by will directed to be laid out in land not to be so laid out.

7. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable uses shall, except as herein-after provided, be held to or for the benefit of the charitable uses as though there had been no such direction to lay it out in the purchase of land.

Power to retain land in certain cases.

8. It shall be lawful for the High Court, or any judge thereof sitting at chambers, or for the Charity Commissioners, if satisfied that land assured by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, by order to sanction the retention or acquisition, as the case may be, of such land.

Application of Act.

9. This Act shall only apply to the will of a testator dying after the passing of this Act.

Saving.

10. Nothing in this Act contained shall limit or affect the exemptions contained in Part Three of the Mortmain and Charitable Uses Act, 1888, or apply to any land or personal estate to be laid out in the purchase of land acquired under any assurance to which such exemptions or any of them apply, or shall exclude or impair any jurisdiction or authority which might otherwise be exercised by a court or judge of competent jurisdiction or by the Charity Commissioners."

General effect of the Act.

Under the Mortmain Act of 9 Geo. II., and also under the Mortmain and Charitable Uses Act, 1888, testamentary gifts for charitable purposes of land or any estate or interest therein, or of money to be laid out in the purchase of, or secured on land or of any personalty savouring of land or of any property to be applied for purposes necessarily involving the acquisition of land were, with certain special exceptions, void. The recent Act has entirely altered the state of the law in this respect. In the first place, it renders lawful charitable gifts by will of land, provided only that land so given must not, except in certain special cases, be retained by the charity, but must be sold within a limited period.

Charitable devises of land.

Definition of "land."

The repeal, by s. 3 of this Act, of the definition of "land" contained in the Act of 1888 must of course be deemed to be only for the purposes of the Act of 1891. As regards conveyances *inter vivos*, as well as wills of persons dying before the passing of this Act (see s. 9 of the Act of 1891), the definition of "land" contained in the Act of 1888 remains in full force, and such assurances are still subject to the restrictions imposed by the last-named Act: see *Re Hollon, Forbes* v. *Hardcastle*, 68 L. T. 160.

Distinction between pure and impure personalty abolished.

So far, then, as regards testamentary dispositions of property made by persons dying on or after the 9th of August, 1891, this Act, by substituting a new definition of "land" for that given by the Act of 1888, does away with the former distinction between pure and impure personalty for the purposes of testamentary gifts to charitable uses, and renders such gifts of any personal property valid equally, and, except as regards leaseholds, without restriction. Moreover, the Act provides that in case of personal property being given by will to or for the benefit of a charity, with a superadded direction for its application in the purchase of land, the direction shall be disregarded, and the gift shall be good released from the direction.

Directions to purchase land.

Marshalling of assets.

It is obvious that the result of these changes in the law is to do away with the necessity of inserting in wills containing charitable gifts any direction for the marshalling of the testator's property for the purposes of such gifts. And, where a charitable legacy is given free of duty, the duty may now be paid out of impure personalty.

Legacy duty.

As to leaseholds.

It will be observed that by the definition given in the 3rd section, "land," for the purposes of the Act, includes "tenements and hereditaments of any tenure." It would seem clear that leasehold lands must be deemed to be included in this definition, so as to subject a testamentary gift of such lands to charitable uses to the restrictions as to sale imposed by this Act.

Bequests of money secured on land, &c.

The exclusion from this definition of "land" of "money secured on land or other personal estate arising from or connected with land" renders impure personalty (other than leaseholds) capable of being freely and effectually given by will to charity. Thus charitable bequests of money secured on mortgage of land whether in fee or for years, or by deposit of title deeds, and of arrears of interest on any such mortgage, and of money charged by way of mortgage, or sums invested on any such mortgage, also charitable bequests of money secured by judgments charging land or by vendor's lien—all of which gifts were formerly void—are now rendered valid as regards wills of testators dying after the passing of the Act. So also, a charitable gift may now be made by will of or out of the proceeds of land devised on trust for sale. And the fact that a sum of money bequeathed to charity is to be raised by sale of lands which have not been sold at the testator's death will not avoid the gift.

Moneys secured by mortgage.

As regards the benefit of the security, when money secured by mortgage is given by will to charity, the position would now seem to be as follows:—The legal estate in the mortgaged land, that is to say, the land itself at law, subject to the equitable right of redemption subsisting in the mortgagor, will immediately on the death of the testator vest in his "personal representatives," notwithstanding any expressions in the will purporting to devise such legal estate directly to the charity or to trustees for its benefit. But by the statute 33 & 34 Vict. c. 34, s. 1, corporations and trustees holding money in trust for any public or charitable purpose are em-

powered to invest the same in real securities without being deemed thereby to have acquired or become possessed of land in mortmain. It would therefore seem, that the executors may make a transfer of the mortgage security to the charitable legatee, and that the latter may accept such transfer and continue to hold the security in accordance with the provisions of the last mentioned Act; and, further, that such a transfer will not require to be made with any of the formalities required by the Act of 1888 in the case of conveyances of land.

Bonds secured on tolls, &c.

The recent enactment removes all doubt as to the validity of testamentary gifts to charitable uses of bonds and debentures secured by public bodies on rates or tolls, notwithstanding that such instruments amount to a specific assignment of the rates or tolls.

Rentcharges.

A rentcharge issuing out of real estate is an incorporeal hereditament, and must, as it would seem, be regarded as included in the definition of land contained in the recent Act, so as to render a devise thereof valid, but subject to the obligation of the charity-devisee to sell it.

Growing crops.

Such growing crops as come under the category of emblements pass to the devisee if the estate is devised, or otherwise pass to the executors; in either case, they have hitherto been regarded as savouring of realty, but now they may obviously be given by will to charitable purposes. Other growing crops, till severed, are realty, being part of the land to which they are attached.

New River shares.

A share in the New River Water and certain other similar shares are real property, see *Buckridge* v. *Ingram*, 2 Ves. Jun. 652, 663. A charitable gift by will of such a share or of a partial interest therein, would accordingly seem to be subject to the restrictions imposed by the Act on devisees of land.

Shares in land-owning companies and partnerships.

The same rule would apparently apply to a gift of a share in a company holding land which is vested in trustees for the individual shareholders in proportion to their shares, so as to entitle the beneficiaries to call on the trustees for part of the land itself. A testamentary gift to charity of a share in a partnership holding land is clearly valid without restriction, where, as is generally the case, the land is held as part of the joint stock and capital of the business, so that the beneficial

interest is constructively converted into personal estate. If the land is held as realty, as, for example, where the testator, although a partner as to the profits is merely a co-owner of the land, the gift would only be valid subject to the statutory restriction as to sale. See *post*, p. 247.

Scope of the Act confined to assurances by will.

Although, by virtue of s. 4 of the Act of 1891, the term "assurance" in that Act includes not only devises, bequests, and other assurances by will, but also various kinds of instruments operating *inter vivos*, the provisions of the Act exclusively apply to testamentary dispositions for charitable purposes. Inasmuch therefore as the restrictions imposed by s. 4 of the Mortmain and Charitable Uses Act, 1888, are still in power as regards charitable gifts *inter vivos* of land of any tenure, it may be well that where such a gift is made, the donor should also by his will devise the lands comprised in the deed to the charity so as to prevent the avoidance of the gift in case he should die before the expiration of twelve months from making the gift. The validity of such a devise appears to have been assumed in *Re Bridger, Brompton Hospital for Consumption* v. *Lewis*, [1893] 1 Ch. 44, where a will made less than eight months before the testator's death was held to pass, by virtue of the Act of 1891, the testator's residuary realty to a charity. See *post*, p. 224.

Devised lands to be sold within a year.

The effect of ss. 5 & 6 of the recent Act is to render valid testamentary gifts of land, as defined by the Act, to charitable purposes, but to compel the devisee, being either a charitable corporation or a trustee for charitable uses, to sell the land within one year after the testator's death, or within such extended period as may be determined by the Court, or a judge, or the Charity Commissioners.

Otherwise to vest in official trustee.

On the expiration of the time limited without "completion" of the sale, the lands unsold are forthwith to vest in the official trustee of charity lands, and the charity are to take all necessary steps for the sale or completion of the sale of such land with all reasonable speed by the administering trustees thereof, and may make orders for the purpose of effectuating such sale. The use of the word "completion" in this section clearly shows that the statutory direction for sale would not be satisfied if a binding contract for sale were entered into but not completed by conveyance within the year.

Reversionary interests in land.

A reversionary interest in land may apparently be validly

devised under the Act to charitable uses, but the Act contains no provision excepting a reversion from the general direction that lands devised to charity are to be sold within a year from the testator's death or within such further time as shall be determined. It may sometimes happen that the trustee cannot within the year make a title to a reversion free from the testator's debts, or it may appear that the property cannot be disposed of to advantage until it falls into possession. In such cases it may perhaps be expected that the proper authorities will consider that there are sufficient grounds for extending the time for sale.

The effect of s. 5 on testamentary gifts of land to incorporated charities does not seem to be quite clear. Hitherto all such gifts have been absolutely void, formerly under the stat. 9 Geo. II. c. 36, and later under s. 4 of the Mortmain and Charitable Uses Act, 1888, but gifts *inter vivos* of lands to incorporated charities, though valid if the formalities required by statute had been complied with, were liable to forfeiture to the Crown unless the corporation had obtained a licence to take and hold land in mortmain. S. 5 does not expressly exempt such testamentary gifts from liability to forfeiture, nor does it in any way refer to such liability. If, therefore, this section be strictly construed, its effect would seem to be merely to put testamentary gifts to incorporated charities on the same footing as similar gifts effectuated by valid assurances *inter vivos*, and so, when read in connection with s. 1 of the Act of 1888, to subject them to forfeiture on entry by the Crown, unless the proper licences have been obtained for the assurance and acquisition of land in mortmain.

It is conceived, however, that a more liberal construction would probably be adopted, so as to avoid giving only such a restricted operation of the recent Act, on the ground that the direction contained in s. 5 for the immediate sale of lands devised to charitable uses prevents lands so devised from being properly said to be acquired "in mortmain," and thus takes them out of the mischief of s. 1 of the Act of 1888, on the principle "cessante ratione, cessat lex."

The 7th section of the Act of 1891 renders valid gifts of money to or for the benefit of a charity with a superadded direction or trust to invest the money in the purchase of

land, and to hold the land for the purposes of the charity, but the gift is to be read as if no such direction or trust had been expressed in the will. Thus, if a sum of money be bequeathed upon trust to purchase land generally and to apply the rents and profits thereof for charitable purposes, or be bequeathed for or towards the purchase of a site for a particular school or church or other building connected with charitable purposes, then, chiefly in the former case, and also, as it would seem, in the latter (subject to the provisions of s. 8), the expressed trust or purpose will be disregarded, and the gift will be taken by the charity or its trustees, with power to invest the money in some other manner for the benefit of the charity. But s. 7 leaves untouched gifts of money for purposes necessarily involving the acquisition of land by the charity-donee, and the omission seems to raise questions of some doubt and difficulty. Such gifts have hitherto been held to be void, and there is nothing in the recent Act which expressly, or as it would seem, by necessary implication, renders them valid. Thus, if a testator gives £500 for the purchase of a site, and a further gift of £500 for the erection of a school thereon, the first gift will be good, the direction to purchase land being disregarded; but the second gift is for a specific purpose which necessarily assumes that the direction shall be carried into effect, and it does not seem clear that, the purpose being incapable of being carried out, this gift would not fail. So also if the gift be of £1000 for the purchase of a site and the building of a school thereon, it would seem arguable that the whole gift would be now, as formerly, void, unless it could be ascertained how much of the gift was attributable to such purpose. And the case against the validity of the gift would be still stronger if the will contained no direction to purchase land at all, but contained a gift of money for the purpose of establishing a charity, which would require the acquisition of land for its establishment.

No doubt these difficulties will in many cases be removed by the operation of s. 8 of the Act which empowers the Court, or a judge at chambers, or the Commissioners, to sanction the acquisition or retention of land for the actual occupation of charitable institutions. It has been seen that gifts of money to be laid out in building on or other purposes connected with land already in mortmain are good, and it is conceived

that the same rule would apply to gifts of money to be applied in connection with land which a charity is allowed to acquire or retain under this section.

Act not retrospective.

The 9th section limits the scope and operation of the Act to wills of testators dying after the passing of the Act, viz., the 5th August, 1891, and so prevents the Act from having a retrospective effect. Accordingly, the validity of testamentary gifts to charitable uses of land or hereditaments, corporeal and incorporeal, and of charges on land, and of personalty "savouring of realty" must be determined according as the testator died before or after the passing of the Act. Where a testator who died after the passing of this Act, by his will made before the passing of the Act, gave to a charity such part of his residue "as may by law be bequeathed to charitable purposes," and gave the remainder to a named person, it was held by *North*, J., that the whole of the residue, comprising realty as well as pure and impure personalty, went to the charity: *Re Bridger, Brompton Hospital* v. *Lewis*, [1893] 1 Ch. 44.

What is Charity.

Gift to "parish."

P. 43, *ad fin.*—After *Re St. Bride's*, add *Re St. Botolph's, &c., Estates*, 35 Ch. D. 142; *Re St. Stephen's, &c.*, 39 Ch. 492.

Workhouse.

P. 44, line 39.—*Barnaby* v. *Barsby* was questioned in *Webster* v. *Southey*, see *ante*, p. 215.

Soup kitchen.

P. 44, line 40.—*Biscoe* v. *Jackson* is also reported 35 Ch. D. 460, C. A.

Friendly Society.

P. 44, *ad fin.*—A gift to a Friendly Society was held to be charitable in *Pease* v. *Pattinson*, 32 Ch. D. 154.

Aged persons.

P. 45, line 21.—After *Nash* v. *Morley*, add *Re Wall, Pomeroy* v. *Millway*, 42 Ch. D. 510.

Gifts to superstitious uses.

P. 48, *ad fin.*—After *Morrow* v. *McConville*, add *Re Elliott, Elliott* v. *Johnson*, W. N. 1891, p. 9, 39 W. R. 297, where it was held that a legacy to a "superstitious use" given by a testator domiciled in England is void though the legatee is resident in a foreign country where such a legacy would be valid.

P. 49, line 32. — After *Re Birkett*, add *Re Vaughan, Vaughan* v. *Thomas*, 33 Ch. D. 187. But, inasmuch as the rule of perpetuities does not apply to charitable gifts, where a testator gave a fund to trustees of charity A, on condition that they should keep in repair his family vault, and, on failure of their complying with the condition, he gave the fund over to charity B, it was held that the condition and gift over were valid: *Re Tyler, Tyler* v. *Tyler*, [1891] 3 Ch. 252, C. A. See also *Re Bowen, Lloyd-Phillips* v. *Davis*, [1893] 2 Ch. 491. See further as to conditions attached to charitable gifts, *Re Richardson, Shuldham* v. *Royal National Lifeboat Institution*, 57 L. T. 17, 35 W. R. 710, 56 L. J. Ch. 784. Rule against perpetuities.

P. 50, line 3.—After *Sinnett* v. *Herbert*, add *Re Lea, Lea* v. *Cooke*, 34 Ch. D. 528. Religious purposes.

P. 50, line 24.—After *Whicker* v. *Hume*, add *Re Berridge, Berridge* v. *Turner*, 63 L. T. 470, C. A. Advancement of learning.

P. 50, line 34.—A gift for the maintenance or benefit of animals generally is apparently charitable: see *Re Douglas, Obert* v. *Barrow*, 35 Ch. D. 472, C. A.; but not so a gift for the maintenance of particular animals, *e.g.*, the testator's horses and hounds: *Re Dean, Cooper-Dean* v. *Stevens*, 41 Ch. D. 552. Benefit of animals.

P. 51, line 5.—A gift for the repair of sea-dykes is charitable as being for a public purpose: *Wilson* v. *Barnes*, 38 Ch. D. 507, C. A. Repair of sea-dyke.

So also a gift to the National Rifle Association: *Re Stephens, Giles* v. *Stephens*, W. N. 1892, p. 140, 8 T. L. R. 792. Rifle Association.

P. 51, line 19.—A gift to endow a private chapel is not charitable: *Hoare* v. *Hoare*, 56 L. T. 147. Private chapel.

Endowment and Trustees of Charities.

P. 54, line 3.—After *Att.-Gen.* v. *Blizzard*, add *Re St. Botolph's Parish Estates*, 35 Ch. D. 142, 151. Trust for poor of parish.

P. 55, line 6.—After *Att.-Gen.* v. *Corporation of Rochester*, add *Re Robinson, Wright* v. *Tugwell*, [1892] 1 Ch. 95, where it was held, that a condition annexed to a testamentary gift Religious purposes.

for endowing a church, that the officiating minister should wear a black gown in the pulpit, was good.

7 & 8 Vict. c. 45, s. 2.

P. 55, line 12.—Add reference to *Att.-Gen.* v. *Anderson*, W. N. 1888, p. 64, 58 L. T. 726, 36 W. R. 714, 57 L. J. Ch. 543.

Advowson.

P. 55, *ad fin.*—In *Re St. Stephen's*, 39 Ch. D. 492 (at p. 504), *Kay*, J., criticised the reasoning of *Jessel*, M.R., in *Att.-Gen.* v. *Webster*, but held that an advowson vested in trustees for the benefit of the parish was held for a charitable purpose.

Appointment of new trustees.

P. 57, line 33.—See now the Trustees Appointment Act, 1890, the effect of which is stated *sub tit.* APPOINTMENT OF TRUSTEES, *ante*, p. 54.

Restriction on leases of charity lands.

P. 60, line 14.—In *Bishop of Bangor* v. *Parry*, [1891] 2 Q. B. 277, it was held by *Charles*, J., that a lease granted by charity-trustees, without the sanction of the Charity Commissioners, for a term exceeding 21 years, was absolutely void.

SCHEMES FOR ADMINISTRATION OF CHARITIES.

Jurisdiction generally,

P. 62, note (*b*).—The Court has jurisdiction on a summons issued under the Charitable Trusts Acts to decide whether the property, which is the subject-matter of the summons, is held upon a charitable trust or not: *Re Norwich Town Close Estate Charity*, 40 Ch. D. 298, C. A.

—to settle schemes.

P. 63, line 37.—After *Re Shrewsbury Grammar School*, add *Re Palatine Estate Charity*, 39 Ch. D. 54.

—to alter schemes.

P. 63, *add fin.*—After *Att.-Gen.* v. *St. John's Hospital*, add *Re Browne's Hospital*, 60 L. T. 288.

Discretion of trustees.

P. 64, line 33.—After *Holmes* v. *Penney*, add *Re Lea, Lea* v. *Cooke*, 34 Ch. 528.

Application for scheme.

P. 65, line 26.—An application for a scheme once made is irrevocable: *Re Poor's Land Charity, Bethnal Green*, [1891] 3 Ch. 400.

PRECEDENTS.

Precedent III.—Conveyance for Churchyard.

Vesting of land conveyed.

P. 70, note (*h*).—When land is conveyed to the Ecclesiastical Commissioners under the Church Building Act, 8 & 9 Vict. c. 70, s. 13, the whole of the land conveyed vests in the incumbent so soon as any part of the land is consecrated: *Plumstead Board of Works* v. *Ecclesiastical Commissioners*, [1891] 2 Q. B. 361.

NOTICES.

PRECEDENTS.

Precedent V.—Lessee to Lessor, determining Lease.

Equitable tenant for life.

P. 102, note (*b*).—As to notice to determine a lease given to an equitable tenant for life, see *ante*, p. 154.

Precedent V.—Lessor to Lessee to remedy Breach of Covenant.

Relief from forfeiture.

P. 103, note (*e*).—As to relief from forfeiture, see the Conveyancing Act, 1892, ss. 2, 4, 5, set out *ante*, pp. 152, 153.

Precedent X.—Disclaimer of Lease by Trustee in Bankruptcy.

P. 105, note (*h*).—The Bankruptcy Rules, 1883, are now repealed, and the Appendix to the Rules of 1890 contains five forms of notices relating to disclaimer, and applicable to various circumstances, viz.:—

Form 119A.—Notice to landlord of intention to disclaim leasehold property not sub-let or mortgaged.

Form 119B.—Notice of intention to disclaim leasehold property sub-let or mortgaged.

Form 120C.—Notice of disclaimer without the leave of the Court.

Form 120D.—Notice of disclaimer with leave of Court.

Form 120E.—Notice by landlord or other person requiring trustee to bring matter of intended disclaimer of property burdened with onerous covenants before the Court.

Precedent XXVIII.—Tenant for Life to Trustees of Settlement of Intention to Sell, &c.

P. 115, note (*t*).—No notice of intention to grant leases for terms not exceeding 21 years is now necessary: see Settled Land Act, 1890, s. 7, set out *ante*, p. 136. Leases for 21 years.

Precedent XXXVII.—Statutory Notice to Creditors.

P. 120, note (*b*).—The effect of a statutory notice is merely to relieve executors or administrators from personal liability after they have distributed the assets: it does not prevent a creditor from following the assets in the hands of beneficiaries who are the proper persons to be sued: see *Re Frewen, Frewen* v. *Frewen*, W. N. 1889, p. 109, 60 L. T. 953. Nor will a creditor's claim, sent in in response to a notice, operate so as to stop the Statute of Limitations from running, so as to keep alive a debt almost statute-barred: *Re Stephens, Warburton* v. *Stephens*, 43 Ch. D. 39. Effect of notice.

As to what advertisement of notices is sufficient, see *Re Bracken, Doughty* v. *Townson*, 43 Ch. D. 1, C. A. Advertisement.

PARTITION.

PRELIMINARY DISSERTATION.

Creation of easements on partition.

P. 133, line 25.—As to the power of a tenant for life to create easements upon a partition effected by him under his statutory powers, see the Settled Land Act, 1890, s. 5, set out *sub tit.* EXCHANGE, *ante*, *p.* 133.

Lands of lunatics.

P. 145, *ad fin.*—The Lunacy Regulation Act, 1862, is now repealed. An application may now be made in Lunacy for a sale under the Lunacy Act, 1890 (53 Vict. c. 5), s. 120. As to sales in lieu of partition of lands of persons of unsound mind, see *Porter* v. *Porter*, 37 Ch. D. 420, C. A.; *Re Bolton*, W. N. 1888, p. 243, C. A.

Service of notice of order.

P. 147, line 18.—Add reference to *Phillips* v. *Andrews*, W. N. 1887, p. 15, 56 L. T. 108, 35 W. R. 266; *Crossman* v. *Richards*, W. N. 1888, p. 167.

Jurisdiction.

P. 150.—The exercise of the jurisdiction to order a sale instead of partition is in the discretion of the judges: *Re Dyer, Dyer* v. *Paynter*, 53 L. T. 744, 33 W. R. 806, C. A.; *Richardson* v. *Feary*, 39 Ch. D. 45.

Proof of title.

As to what proof will be required as to the title of persons claiming to be interested, see *Re Stedman, Coombe* v. *Vincent*, W. N. 1888, p. 119, 58 L. T. 709; *Goodacre* v. *Goodacre*, W. N. 1888, p. 138; *Wood* v. *Gregory*, 43 Ch. D. 82; *Hawkins* v. *Herbert*, 60 L. T. 142, 37 W. R. 300.

Persons under disability.

As to sale out of Court of property belonging to persons under disabilities, see r. 9 of the Rules of December, 1888. Accordingly, a sale out of Court has been ordered of lands of an infant: *Willis* v. *Willis*, 61 L. T. 610, 38 W. R. 7; also of lands of a lunatic: *Crook* v. *Crook*, W. N. 1890, p. 26, but in that case *Chitty*, J., intimated that the decision must not be regarded as of general application.

Costs.

P. 151, line 27.—After *Simpson* v. *Ritchie*, add *Belcher* v. *Williams*, 45 Ch. D. 510, where it was said that there is no

fixed rule in partition actions, that only one set of costs will be allowed in respect of each share of the property.

P. 152, line 12.—The powers of the Land Commissioners are now transferred to the Board of Agriculture: see stat. 52 & 53 Vict. c. 30, s. 2. Board of Agriculture.

P. 153.—As to stamps, see *post*, *sub tit.* STAMPS. Stamps.

PARTNERSHIPS AND COMPANIES.

PRELIMINARY DISSERTATION.

Partnership Act, 1890.

Pp. 195, *et seq.*—Many of the propositions here laid down must now be read with reference to the Partnership Act, 1890 (53 & 54 Vict. c. 39), where the leading principles of partnership law are for the first time put into the form of a legislative enactment. The Act is mainly a consolidating one, and effects little change in the law so far as it might formerly have been ascertained from judicial decisions. One important alteration is effected in procedure (s. 23), whereby a writ of execution is no longer to issue against the partnership property in respect of any one partner's separate judgment debt. Other modifications of the previous law will be noticed in their appropriate places. The Act is as follows:—

THE PARTNERSHIP ACT, 1890.

53 & 54 Vict. c. 39.

An Act to declare and amend the Law of Partnership.

[14th *August*, 1890.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Nature of Partnership.

Definition of partnership.

1.—(1.) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

(2.) But the relation between members of any company or association which is—

25 & 26 Vict. c. 89.

(*a.*) Registered as a company under the Companies Act, 1862

or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or

(*b.*) Formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter; or

(*c.*) A company engaged in working mines within and subject to the jurisdiction of the Stannaries:

is not a partnership within the meaning of this Act. (See *post*, p. 244.)

Rules for determining existence of partnership.

2. In determining whether a partnership does or does not exist, regard shall be had to the following rules:

(1.) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof (p. 246).

(2.) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3.) The receipt by a person of a share of the profits of a business is *primâ facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—

(*a.*) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such:

(*b.*) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:

(*c.*) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such:

(*d.*) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto:

(*e.*) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of

the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such (pp. 244, 247).

Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency.

3. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

Meaning of firm.

4.—(1.) Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.

(2.) In Scotland a firm is a legal person distinct from the partners of whom it is composed, but an individual partner may be charged on a decree or diligence directed against the firm, and on payment of the debts is entitled to relief *pro ratâ* from the firm and its other members (p. 248).

Relations of Partners to Persons dealing with them.

Power of partner to bind the firm.

5. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner (p. 250).

Partners bound by acts on behalf of firm.

6. An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners.

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments (p. 250).

Partner using credit of firm for private purposes.

7. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner (p. 250).

Effect of notice that firm will not be bound by acts of partner.

8. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement (p. 250).

Liability of partners.

9. Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts (pp. 247, 249).

Liability of the firm for wrongs.

10. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act (p. 249).

Misapplication of money or property received for or in custody of the firm.

11. In the following cases; namely—

(*a.*) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

(*b.*) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;

the firm is liable to make good the loss (p. 249).

Liability for wrongs joint and several.

12. Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of the two last preceding sections.

Improper employment of trust property for partnership purposes.

13. If a partner, being a trustee, improperly employs trust-property in the business or on the account of the partnership, no other partner is liable for the trust-property to the persons beneficially interested therein.

Provided as follows:—

(1.) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

(2.) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control (p. 249).

Persons liable by "holding out."

14.—(1.) Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit

by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2.) Provided that where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors' or administrators' estate or effects liable for any partnership debts contracted after his death (p. 247).

Admissions and representations of partners.

15. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm (pp. 245, 251).

Notice to acting partner to be notice to the firm.

16. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner (p. 251).

Liabilities of incoming and outgoing partners.

17.—(1.) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2.) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3.) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing guaranty by change in firm.

18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given.

Relations of Partners to one another.

Variation by consent of terms of partnership.

19. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing (pp. 245, 256).

Partnership property.

20.—(1.) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement (p. 252).

(2.) Provided that the legal estate or interest in any land, or

in Scotland the title to and interest in any heritable estate, which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section (pp. 252, 254).

(3.) Where co-owners of an estate or interest in any land, or in Scotland of any heritable estate, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase (pp. 247, 254).

Property bought with partnership money.

21. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm (p. 253).

Conversion into personal estate of land held as partnership property.

22. Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal or moveable and not real or heritable estate (pp. 254, 255).

Procedure against partnership property for a partner's separate judgment debt.

23.—(1.) After the commencement of this Act a writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2.) The High Court, or a judge thereof, or the Chancery court of the county palatine of Lancaster, or a county court, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3.) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

(4.) This section shall apply in the case of a cost-book company as if the company were a partnership within the meaning of this Act.

(5.) This section shall not apply to Scotland (pp. 232, 253).

Rules as to interests and duties of partners subject to special agreement.

24. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:

(1.) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm (p. 253).

(2.) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—

(*a.*) In the ordinary and proper conduct of the business of the firm; or,

(*b.*) In or about anything necessarily done for the preservation of the business or property of the firm (p. 251).

(3.) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per cent. per annum from the date of the payment or advance.

(4.) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.

(5.) Every partner may take part in the management of the partnership business.

(6.) No partner shall be entitled to remuneration for acting in the partnership business.

(7.) No person may be introduced as a partner without the consent of all existing partners.

(8.) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners (p. 257).

(9.) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them (pp. 251, 257).

Expulsion of partner.

25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners (p. 256).

Retirement from partnership at will.

26.—(1.) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

(2.) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose (p. 256).

Where partnership for term is continued over, continuance on old terms presumed.

27.—(1.) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2.) A continuance of the business by the partners or such of

them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership (p. 245).

Duty of partners to render accounts, &c.

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives (p. 257).

Accountability of partners for private profits.

29.—(1.) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connexion.

(2.) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner (pp. 251, 253).

Duty of partner not to compete with firm.

30. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business (p. 253).

Rights of assignee of share in partnership.

31.—(1.) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2.) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution (pp. 253, 255).

Dissolution of Partnership, and its consequences.

Dissolution by expiration or notice.

32. Subject to any agreement between the partners, a partnership is dissolved—

(*a.*) If entered into for a fixed term, by the expiration of that term:

(*b.*) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking (p. 246):

(*c.*) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice (pp. 255, 256).

Dissolution by bankruptcy, death, or charge.

33.—(1.) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2.) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt (p. 255).

Dissolution by illegality of partnership.

34. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership (pp. 249, 255).

Dissolution by the Court.

35. On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:

(*a.*) When a partner is found lunatic by inquisition, or in Scotland by cognition, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner:

(*b.*) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract:

(*c.*) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business:

(*d.*) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him:

(*e.*) When the business of the partnership can only be carried on at a loss:

(*f.*) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved (p. 255).

Rights of persons dealing with firm against apparent members of firm.

36.—(1.) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2.) An advertisement in the *London Gazette* as to a firm whose principal place of business is in England or Wales, in the *Edinburgh Gazette* as to a firm whose principal place of business is in Scotland, and in the *Dublin Gazette* as to a firm whose principal place of business is in Ireland, shall be notice as to persons

who had not dealings with the firm before the date of the dissolution or change so advertised (p. 256).

(3.) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively (p. 256).

Right of partners to notify dissolution.

37. On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence (p. 256).

Continuing authority of partners for purposes of winding up.

38. After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt (p. 256).

Rights of partners as to application of partnership property.

39. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm (p. 253).

Apportionment of premium where partnership prematurely dissolved.

40. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued; unless

(*a.*) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or

(*b.*) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium (p. 252).

Rights where partnership

41. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto,

dissolved for fraud or misrepresentation.

the party entitled to rescind is, without prejudice to any other right, entitled—

(*a*) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him, and is

(*b*) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and

(*c*) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm (p. 252).

Right of outgoing partner in certain cases to share profits made after dissolution.

42.—(1). Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets.

(2.) Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section (p. 256).

Retiring or deceased partner's share to be a debt.

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

Rule for distribution of assets on final settlement of accounts.

44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

(*a.*) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits:

(*b.*) The assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:

1. In paying the debts and liabilities of the firm to persons who are not partners therein:
2. In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital:
3. In paying to each partner rateably what is due from the firm to him in respect of capital:
4. The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible (p. 253).

Supplemental.

Definitions of "court" and "business."

45. In this Act, unless the contrary intention appears,—
The expression "court" includes every court and judge having jurisdiction in the case:
The expression "business" includes every trade, occupation, or profession (p. 246).

Saving for rules of equity and common law.

46. The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

Provision as to bankruptcy in Scotland.

47.—(1.) In the application of this Act to Scotland the bankruptcy of a firm or of an individual shall mean sequestration under the Bankruptcy (Scotland) Acts, and also in the case of an individual the issue against him of a decree of cessio bonorum.

(2.) Nothing in this Act shall alter the rules of the law of Scotland relating to the bankruptcy of a firm or of the individual partners thereof.

Repeal.

48. The Acts mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Commencement of Act.

49. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-one.

Short title.

50. This Act may be cited as the Partnership Act, 1890.

SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
19 & 20 Vict. c. 60.	The Mercantile Law Amendment (Scotland) Act, 1856.	Section seven.
19 & 20 Vict. c. 97.	The Mercantile Law Amendment Act, 1856.	Section four.
28 & 29 Vict. c. 86.	An Act to amend the law of partnership.	The whole Act.

Definition of partnership.

P. 196, line 5.—Partnership is now defined by the Partnership Act, 1890, s. 1 (set out *ante*). This definition does not state that the partnership relation is the result of agreement, nor that the persons carrying on the business have agreed to share the profits, nor that the business is carried on by all or any of them on behalf of all of them, as in the definition stated in the text, and which was taken from the Bill introduced into Parliament in 1886.

Number of partners limited.

P. 196, line 11.—The law as here stated is apparently unaffected by the new Act. Registered companies are expressly excluded from the definition (see s. 1, sub-s. (2)).

Sharing profits.

P. 197, *ad fin.*—After *Walker* v. *Hirsch*, add *Badeley* v. *Consolidated Bank*, 38 Ch. D. 238, C. A.; *Adam* v. *Newbigging*, 13 App. Cas. 308. The effect of sharing the profits of a business in affording evidence of a partnership is now regulated by s. 2, sub-s. (3), of the Partnership Act, 1890 (set out *ante*). This section is inconsistent with Lord Justice Lindley's *dictum* in *Badeley* v. *Consolidated Bank* (*supra*). "It appears to me to be a fallacy to say that you are to proceed upon the idea that sharing profits *primâ facie* creates a partnership" (38 Ch. D. at p. 258). According to the strict interpretation of this sub-section it would seem that, if the only fact proved was receipt of a share of the profits, the Court has no alternative but to say that a person so receiving was a partner unless he came within the exceptions of the other sub-sections. Whether such was the intention of the Legislature or not is a point on which it might be presumptuous to express an opinion. But this sweeping change in the well-settled rule of law that the existence of a contract of partnership depends on the intention of the parties to be proved or implied from all the circumstances of the case is likely to be productive of litigation, and in some cases of hardship. The numerous exceptions to the general rule are by no means exhaustive, having regard to previous decisions as to what is sufficient evidence of partnership.

Partnership a question of fact and law.

P. 197, note (*c*).—In *Davies* v. *André*, 24 Q. B. D. 598, C. A., *Wills*, J., at p. 603, says: "There is no more difficult question of fact and law than those which occasionally arise as to the fact of partnership." See also per Lord

Halsbury in *Adam* v. *Newbigging*, 13 App. Cas. 308, at p. 316. As to the creation of a partnership between a debtor and his creditor where the debtor had assigned his business to the creditor to carry it on on his behalf, see *Re Whiteley, Ex parte Smith*, 67 L. T. 69, C. A.

Statute of Frauds.

P. 199, line 30.—In *Gray* v. *Smith*, 43 Ch. D. 208, C. A., *Kekewich*, J., held that an agreement for dissolution of a partnership is within the Statute of Frauds, if one of the terms is that the party sought to be charged must part with and assign to others an interest in land. Here the term was that a retiring partner should assign his share in the partnership property, part of which consisted of a leasehold interest vested in all the partners. This decision was affirmed by the Court of Appeal, although the point was not re-argued.

Variation of articles by conduct of partners.

P. 200, line 25.—As to the variation of the written agreement by the actual course of dealing acquiesced in by the partners, see s. 19 of the Partnership Act, 1890 (set out *ante*).

Admissions.

P. 200, note (*d*).—As to what admissions or representations made by a partner are evidence against the firm, see Vol. IV., p. 254, and s. 15 of the Partnership Act, 1890 (set out *ante*).

Partnership continued after expiration of term.

P. 202, line 13.—In *Neilson* v. *Mossend Iron Co.*, 11 App. Cas. 298, Sc., it was held that a somewhat special clause in the articles providing for the valuation of a retiring partner's share "if three months before the termination of the contract" all the partners should not agree to carry on the business, was not enforceable after the expiration of the partnership term, and was not applicable to the partnership at will which resulted from continuing the business without any further agreement. But Lord *Watson* distinctly laid down the general rule that all the stipulations and conditions of the original contract remain in force in so far as these are not inconsistent with any implied term of the renewed contract: see at p. 308. See also per Lord *Selborne*, at p. 304. The general principle laid down in that case as to the presumption of an agreement to continue on the old terms so far as applicable is now expressed in s. 27 of the Partnership Act, 1890 (set out *ante*). In *Daw* v. *Herring*, [1892] 1 Ch. 284 (a case decided after the Act, although s. 27 was not examined, nor, apparently, cited), *Stirling*, J., held that a clause giving a partner an option to purchase his co-partner's

share on the retirement of the latter was applicable to the partnership at will which resulted from continuing the partnership. In *Myers* v. *Myers*, 60 L. J. Ch. 311, it was held that, where an expired partnership is continued only for the purpose of winding up, a clause providing for the purchase by a surviving partner of a deceased partner's share is no longer binding.

Specific performance.

P. 202, line 17.—After *Scott* v. *Rayment*, add *Lancaster* v. *Allsup*, W. N. 1887, p. 134, 57 L. T. 53, where *Stirling*, J., refused to compel the executors of a deceased partner to become partners against their will, although the partnership articles expressly provided that, if a partner should die during the partnership term, his executors should become partners in his place.

Remedy for breach of agreement.

Specific performance was refused, however, without prejudice to any right of the surviving partners against the testator's estate for breach of the agreement.

Joint adventure.

P. 203, line 29.—The Partnership Act does not expressly include "joint adventure" in the definition of partnership given by s. 1 (see also s. 45). But it may be doubted whether a single "adventure" is not impliedly included in the definition of partnership by virtue of s. 32, sub-s. (*b*). For an example of a "joint adventure," see *Lowe* v. *Dixon*, 16 Q. B. D. 455.

Acquisition of gain.

P. 205, line 36.—Add reference to *Re Liddall*, 29 Ch. D. 1, C. A., where an association of more than twenty persons for the purpose of purchasing a particular estate and allotting the land among the members was held not to be an association formed for the purpose of carrying on a business for the acquisition of gain within s. 4 of the Companies Act, 1862.

Clubs.

P. 207, line 1.—As to the liability of a club committee to tradesmen for goods supplied to the club, see *Steele* v. *Gourley*, W. N. 1887, p. 147, C. A.; *Stansfield* v. *Ridout*, 5 T. L. R. 656; *Harper* v. *Granville-Smith*, 7 T. L. R. 284.

Co-owners not necessarily partners.

P. 209, line 25.—As to co-ownership not necessarily constituting partnership, see s. 2, sub-s. (1) of the Partnership Act, 1890 (set out *ante*). See also Vol. IV., pp. 210, 211.

P. 209, line 32.—After *Steward* v. *Blakeway*, add *Re*

Hulton, Hulton v. *Lister*, W. N. 1890, p. 14, 62 L. T. 200, C. A. By s. 20, sub-s. (3) of the Partnership Act, 1890 (set out *ante*), it is expressly provided that land purchased out of profits by co-owners is not necessarily partnership property, even though such co-owners are partners as to the profits made by the use of that land. Land bought by co-owners out of the profits.

P. 214, *et seq.*—The stat. 28 & 29 Vict. c. 86 (commonly called Bovill's Act), was repealed by the Partnership Act, 1890 (s. 48, and schedule), but has been substantially re-enacted by s. 2, sub-s. (3), and s. 3 of the later Act (set out *ante*). The recent Act has, however, effected some alterations which will be briefly noticed. In adapting s. 3 of Bovill's Act, the new Act omits the words "of a trader" after "deceased partner," thereby extending its application to deceased partners of persons who are not traders. Sect. 1 of the earlier Act is now supplemented by an addition to the effect that the written contract must be signed by all parties thereto. Bovill's Act.

Some improvements in language will be observed in s. 3 of the new Act, which is substituted for s. 5 of Bovill's Act, but no substantial alteration appears to be effected. Reference may still be made to the following further decisions on Bovill's Act, *Frowde* v. *Williams*, 56 L. T. 441, 56 L. J. Q. B. 62; *Badeley* v. *Consolidated Bank*, 38 Ch. D. 238, C. A.; *Re Vince, Ex parte Baxter*, [1892] 1 Q. B. 587, 2 Q. B. 478, C. A.; *Re Hildesheim, Ex parte The Trustee*, W. N. 1893, p. 137, C. A.

P. 219, line 6.—After *King* v. *Hoare*, add *Cambefort* v. *Chapman*, 19 Q. B. D. 229; *Hammond* v. *Schofield*, [1891] 1 Q. B. 453; *Hoare* v. *Niblett*, [1891] 1 Q. B. 781. The principle of *res judicata* does not extend to the case of a surety: *Badeley* v. *Consolidated Bank*, 34 Ch. D. 536; affirmed on this point 38 Ch. D. 238, C. A. In *Pilley* v. *Robinson*, 20 Q. B. D. 155, *Stephen* and *Charles*, JJ., held that the plaintiff might be compelled by the defendant to join as parties the defendant's co-contractors. As to the liability of the estate of a deceased partner, see *Blyth* v. *Fladgate*, [1891] 1 Ch. 337; see also s. 9 of the Partnership Act, 1890 (set out *ante*), and Vol. IV., p. 240, and *post*, p. 249. Actions against co-contractors. Deceased partner's estate.

Pp. 219, 220.—The law as to liability by holding out as a partner is now summarized in s. 14 of the Partnership Act, Holding out.

1890. By the words "on the faith of any such representation" the legislature seems to have adopted the view of Lord *Ellenborough* in *Alderson* v. *Pope* (cited Vol. IV., p. 220) in preference to that taken in *Young* v. *Axtell* (Vol. IV., p. 219). The section generally seems to be framed in accordance with the principles laid down by *Parke*, B., in *Dickenson* v. *Valpy* (Vol. IV., p. 220).

Meaning of "firm."

Pp. 220—222.—A partnership "firm" is now expressly defined by s. 4 of the Partnership Act, 1890 (set out *ante*). This definition corresponds with the view of the law of England and Scotland (Vol. IV., p. 221, note (*p*)) here taken.

Action by and against firm.

P. 222, line 14, and note (*i*).—The Rules of the Supreme Court, 1883, relating to partners, including Ord. XVI., r. 14, were repealed by the Rules of the Supreme Court, June, 1891. The new order, Ord. XLVIIIA., consolidates and amends the old practice as to partnership procedure, grouping together under one head all the scattered rules on this subject, and provides that actions may be maintained between firms and their individual members. See further, Vol. IV., pp. 271, 272, and *post*, p. 252.

Who may be Partners.

Infants.

P. 225, line 2.—After *Baker's Case*, add *Whittingham* v. *Murdy*, 60 L. T. 956.

Married women.

P. 227, line 28.—After *Ex parte Jones*, add *Re Gardiner, Ex parte Coulson*, 20 Q. B. D. 249. Where a wife lends money to a partnership firm of which her husband is a member, s. 3 of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), does not apply, and she is entitled to prove in bankruptcy against the joint estate in competition with other creditors: *Re Tuff, Ex parte Nottingham*, 19 Q. B. D. 88.

Illegal Partnerships.

Repeal.

P. 229, *ad fin.*—The stat. 6 Geo. IV. c. 81, is repealed by the Hawkers Act, 1888 (51 & 52 Vict. c. 33).

Medical practitioners.

P. 234, line 23.—In *Howarth* v. *Brearley*, 19 Q. B. D. 303, the Divisional Court expressed a reluctancy to follow *Turner* v. *Reynall*, but preferred the later decisions of *Leman* v. *Houseley* and *De la Rosa* v. *Prieto*. Thus, it was held that a qualified practitioner registered under the Medical Act, 1858 (21 & 22 Vict. c. 90), was not entitled to recover charges in respect of services rendered only by his partner or assistant, who was neither so qualified nor registered, and who held no apothecary's certificate under the Apothecaries Act, 1815 (55 Geo. 3, c. 194), on the ground that the qualified practitioner had taken no part in the services so rendered.

Dissolution by illegality.

P. 239, line 5.—As to dissolution of a partnership by reason of its having become illegal, see s. 34 of the Partnership Act, 1890 (set out *ante*).

Rights and Obligations of Partners.

Partnership Liability.

Nature of partnership liability.

P. 240, line 35.—The nature of partnership liability is now stated in s. 9 of the Partnership Act, 1890 (set out *ante*), to be joint during the lifetime of every partner, but with a separate liability as regards his estate after death, thus substantially affirming the law as laid down in *Kendall* v. *Hamilton*. In the case of wrongs (s. 10) and in certain cases of the misapplication of moneys (s. 11), the liability of partners is joint and several.

Breach of trust.

P. 241, line 16.—After *Ex parte Chandler*, add *Ex parte Sheppard, Re Parker*, 19 Q. B. D. 84, and as to the liability of partners for breach of trust by their co-partners, see s. 13 of the Partnership Act, 1890 (set out *ante*).

Unsatisfied judgment on bill of exchange.

P. 241, line 19.—In *Cambefort* v. *Chapman*, 19 Q. B. D. 229, the Divisional Court distinguished *Drake* v. *Mitchell*, and held that where judgment has been obtained against a partner upon a bill of exchange given to secure a partnership debt, the matter is *res judicata*, and no action will lie against the other partner upon the original contract. Compare the converse case of *Odell* v. *Cormack*, 19 Q. B. D. 223, where the point was left undecided.

Power of Partner to bind Firm.

General principle.

Pp. 241 to 256.—The general principle of partnership agency is now affirmed by s. 5 of the Partnership Act, 1890 (set out *ante*), while the following sections (ss. 6, 7, and 8) deal with the rules of law which have sprung from this principle. The rule that one partner has no power to bind the firm in transactions outside the usual scope of the business is stated in s. 7, and merely affirms the existing law.

Authority limited to scope of business.

As to customer's knowledge of want of authority.

Sect. 8 expresses the rule of law that notice of a restriction upon the authority of a partner will prevent the creditor from holding the firm liable. Thus if a person known to be a sleeping partner should attempt to act as a managing partner, his acts as against the firm would be nugatory. To this extent, therefore, the opening statement to s. 5, that "every partner is an agent of the firm" must be treated as qualified; see also per *Cotton*, L.J., in *Badeley* v. *Consolidated Bank*, 38 Ch. D. at p. 247.

Whether one partner can bind another by deed.

As to whether one partner can bind another by deed, see s. 6 of the Partnership Act, 1890 (set out *ante*), which provides that an instrument relating to the business of the firm and executed in the firm-name by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners. The words "whether a partner or not" appear to include a salaried manager of the firm who is not a partner.

Bills of exchange.

P. 248, line 32.—After *Kirk* v. *Blurton*, add *Odell* v. *Cormack*, 19 Q. B. D. 223.

Sub-partnership.

P. 243, line 3.—A partner has no implied authority to bind the firm to become partners with other persons in another business: *Singleton* v. *Knight*, 13 App. Cas. 788, P. C.

Power to accept shares in satisfaction of firm debt.

P. 252, line 6.—In *Weikersheim's Case* the firm was engaged in banking business, and it was shown that taking shares in a company as security for debts owing to the firm was in the "ordinary course" of banking business: see per *Cotton*, L.J., in *Niemann* v. *Niemann*, 42 Ch. D. 198, C. A. (at p. 204), in which case it was held that as a general rule a partner has no implied authority to accept shares in a company, even though fully paid up, in satisfaction of a debt owing to the firm.

P. 252, line 21.—After *Ex parte Owen*, add *Collins* v. *Barker*, [1893] 1 Ch. 578, where, upon the bankruptcy of one partner, the solvent partner was appointed receiver and manager of the partnership business on giving security to the Court. Bankruptcy of one partner.

P. 253, line 26.—As to the power of the manager of a trading company to borrow money on behalf of the company, see *Re Cunningham & Co., Simpson's Claim*, 36 Ch. D. 532; and as to the power of an agent to bind his principal by borrowing money, see *Montaignac* v. *Shitta*, 15 App. Cas. 357. Power to borrow money.

P. 254, line 34.—That an admission by a partner is as a rule evidence against the firm, see s. 15 of the Partnership Act, 1890 (set out *ante*). Admissions.

P. 256, line 21.—That notice to one member of a firm is, as a rule, notice to all the members, see s. 16 of the Partnership Act, 1890 (set out *ante*). Notice.

P. 256, *ad fin.*—After *Cleather* v. *Twisden*, add *Blyth* v. *Fladgate*, [1891] 1 Ch. 337, where actual knowledge of the breach of trust was not proved, but *Stirling*, J., held that, as the guilty partner was acting as a member of the firm, he was the agent of the firm, and that his knowledge must be imputed to the other partners.

P. 263, line 19.—As to the liability of a partner to account for an advantage which he has secured for himself by his connection with the partnership, see *Aas* v. *Benham*, [1891] 2 Ch. 244, and s. 29 of the Partnership Act, 1890 (set out *ante*). Private advantage through partnership connection.

P. 264, line 27.—After *Redmayne* v. *Foster*, add *Dodds* v. *Preston*, 59 L. T. 718. Mining partnerships.

P. 266, line 25.—The right of a partner to be indemnified by the firm in respect of expense incurred by him is affirmed by s. 24, sub-s. (2) of the Partnership Act, 1890 (set out *ante*). Contribution and indemnity.

P. 266, *ad fin.*—As to the duty of partners with respect to the custody of the partnership books, see s. 24, sub-s. (9), of the Partnership Act, 1890 (set out *ante*). Partnership books.

P. 270, line 7.—In the case of misrepresentation even without fraud, the Court will rescind the contract and order repay- Misrepresentation.

ment of the capital brought in by the partner who has been misled: *Adam* v. *Newbigging*, 13 App. Cas. 308. As to the rights of parties where the partnership contract is rescinded on the ground of fraud or misrepresentation, see s. 41 of the Partnership Act, 1890 (set out *ante*).

Return of premiums.

P. 270, line 13.—The previous law as to the right of a partner (except in the case of his own misconduct) to a return of part of his premium when the partnership has been prematurely dissolved is now affirmed by s. 40 of the Partnership Act, 1890 (set out *ante*). As to misconduct depriving a partner of his right to a return of premium on premature dissolution, see *Yates* v. *Cousins*, W. N. 1889, p. 57, 60 L. T. 535.

Actions by and against Partners.

Partnership rules of 1891.

Pp. 271, 272.—By Order XLVIIIA. of the Rules of the Supreme Court, 1891, which came into operation on the 1st of July, 1891, the rules here mentioned (viz., Order XVI., rules 14 & 15; Order VII., rule 2; Order IX., rules 6 and 7; and Order XII. rule 16) were repealed. This new Order consolidates all the above rules (including also Order XLII., rule 10, and Order XLV., rule 10), and substantially re-enacts them, but with some important additions and alterations.

By rule (10) of Order XLVIIIA. it is now expressly provided that the above rules shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, thereby settling the doubt referred to (Vol. IV. p. 272) in accordance with the opinion of Lord Justice *Lindley*. See further as to the new procedure, the Annual Practice, 1893.

PARTNERSHIP PROPERTY.

What is partnership property.

P. 273, line 9.—Sect. 20 of the Partnership Act, 1890 (set out *ante*), contains a quasi-definition of partnership property, which, it will be seen, corresponds with the general rule here stated for ascertaining what is partnership property. Express provision is also made (s. 20 (2)) for the usual devolution of

the legal estate in the case of land in trust for the firm. (See also Vol. IV., p. 280.)

P. 273, line 26.—The statement of law here made to the effect that property purchased with partnership moneys is presumably partnership property is now expressly enacted by s. 21 of the same Act. Property bought with partnership money.

P. 273, line 29.—That a partner is not entitled to obtain for himself any advantage by means of his connection with the firm, see s. 29 of the same Act. Analogous to this rule is the rule that if a partner competes with his own firm, by carrying on a similar business, he must account for all profits made by him in that business, see s. 30 of the same Act. See also *Aas* v. *Benham*, [1891] 2 Ch. 244, C. A. Accountability for private profits. Duty not to compete with firm.

P. 276, line 38.—The Partnership Act, 1890, contains no definition of a partnership share, but the rules for distribution of assets on a final settlement of accounts (see s. 44) will furnish a good guide as to how it is to be ascertained. The effect of an assignment by any partner of his share is stated in s. 31 of the same Act (set out *ante*). Nature of partnership share. Assignment of share.

P. 277, line 13.—The right of every partner to have the partnership property applied in payment of the partnership debts is affirmed by s. 39 of the same Act (set out *ante*). Partner's lien.

P. 277, line 32.—The former right of a creditor of a partner in respect of his private debt to levy execution upon the partnership property, and thereby occasion great inconvenience to the other partners, is now abrogated, and an important alteration in the law is effected by s. 23 of the Act (set out *ante*), whereby the creditor's remedy is to obtain a charging order against the partner's share in the partnership. As to the effect of such an order upon the continuance of the partnership, see *post*, p. 255. Procedure against partnership property for a partner's separate judgment debt.

P. 279, line 11.—As to land bought by co-owners out of profits made by the use of that land, see Vol. IV., p. 209, and *ante*, p. 247. Partnership in profits and not in capital.

P. 279, line 21.—As to the presumed equality of partnership shares, see s. 24, sub-s. (1) of the Partnership Act, 1890 (set out *ante*). Amount of partner's share.

P. 279, line 28.—See now as to the distribution of assets on the dissolution of a partnership, s. 44 of the Act. And

see *Binney* v. *Mutrie*, 12 App. Cas. 160, P. C., which case, though decided before the passing of the Act, affords a good illustration of the application of the principles laid down in the Act as to the distribution of the surplus assets of a solvent firm on its dissolution.

Interest of partners in real estate.

P. 281, line 1.—For "lands derived under the will were partnership property, but not the purchased lands," read "purchased lands were partnership property, but not the lands derived under the will."

Reconversion of land retained after dissolution.

Where land forming part of the assets of a partnership was retained by the partners after dissolution and let out to tenants without any new contract being entered into, it was held that the property was held as real estate by the partners as tenants in common, and that upon the death of one of such co-owners intestate his share devolved on his heir at law: *Myers* v. *Myers*, 61 L. T. 757.

Joint speculations in land.

Where two persons for many years speculated jointly in purchases and sales of land, and no articles of partnership were entered into, but a joint banking account was kept, and half-yearly accounts were made, it was held that the relation between the persons was that of partners, and that upon the death of one of the persons his share in certain lands and chief rents belonging to them devolved on his next of kin as personalty: *Re Hulton*, *Hulton* v. *Lister*, W. N. 1890, p. 14, 62 L. T. 200, C. A.

See now as to the devolution of real estate belonging to a partnership, and of real estate bought out of partnership profits, ss. 20, 22, of the Partnership Act, 1890.

Probate duty.

P. 283, line 7.—Where the business of a firm is carried on in a foreign country, the share of a deceased partner in the partnership assets is not liable to probate duty, though the products are remitted to partners resident in this country for sale, and the deceased partner was one of those so resident: *Laidlay* v. *Lord Advocate*, 15 App. Cas. 468, Sc.

Legacy duty.

Where a testator, domiciled in this country, carried on the business of sheep rearing in New Zealand in partnership with another person, and bequeathed to certain charities his share in the proceeds of sale of a landed estate belonging to the partnership on which the business was carried on, it was held that the bequests were liable to legacy duty: *Re Stokes*,

Stokes v. *Ducroz*, W. N. 1890, p. 18, 62 L. T. 176, 38 W. R. 535.

P. 283, line 28.—It is now provided by s. 22 of the Partnership Act, 1890 (set out *ante*), that where land has become partnership property it shall be treated as personal estate. Conversion of real estate.

Dissolution of Partnership.

P. 284, line 21.—The ordinary causes of dissolution here stated are now expressly enacted by ss. 32 and 33 of the Partnership Act, 1890 (set out *ante*). Dissolution by death, bankruptcy or mutual agreement.

P. 284, line 31.—After *Aspinall* v. *London & N. W. Rail. Co.*, add *Helmore* v. *Smith* (No. 1), 35 Ch. D. 436, C. A. (see at p. 446). Execution of a partner's share has been abolished (see *ante*, p. 253). By s. 33, sub-s. (2), the substituted procedure of a charging order may be treated as a cause of dissolution, at the option of the other partner or partners. Execution.

P. 285, line 4.—The effect of assignment by a partner of his share as regards dissolution is apparently not touched by the Partnership Act, 1890. As to what are the rights of the assignee, see s. 31 of the same Act. Assignment.

P. 285, line 19.—That a partnership is dissolved if its object becomes illegal, see now s. 34 of the same Act. Illegality of object.

P. 286, line 14.—That lunacy or unsoundness of mind is a ground for dissolution by the Court, see s. 35 (a) of the same Act. This section enumerates all the grounds upon which the Court may decree a dissolution, which may be briefly indicated as follows: (*a*) unsoundness of mind; (*b*) physical incompetence; (*c*) gross misconduct; (*d*) impracticability of any partner other than the partner seeking a dissolution; (*e*) "when the business of the partnership can only be carried on at a loss;" (*f*) whenever any circumstances have arisen which render it just and equitable to dissolve. Lunacy. Upon what grounds courts of equity dissolve partnerships.

P. 286, *ad fin.*.—After dissolution, the Court has jurisdiction to order a sale, notwithstanding that one of the partners objects, if that is shown to be the most advantageous Receiver and manager till sale.

mode of realization; and a receiver and manager may be appointed till sale: *Taylor* v. *Neate*, 39 Ch. D. 538.

Partnership at will.

P. 287, *ad fin.*—That a partnership at will may be terminated at any time by notice to the other partners, see s. 26, and that, if no date is mentioned, the dissolution dates from the notice, see s. 32 of the Act (set out *ante*).

Trading with deceased partner's capital.

P. 288, line 34.—As to the right of the estate of a deceased partner to a rateable proportion of the profits made after the death, where his share is continued in the business, see s. 42 of the Act (set out *ante*).

Continuing authority of partners for purposes of winding-up.

P. 289, line 33.—That the power of a partner to bind his co-partners exists after dissolution for purposes connected with the mere winding up of the business, see s. 38 of the Act (set out *ante*).

What notice of dissolution requisite.

P. 293, *ad fin.*—The general rule here stated that notice in the *London Gazette* is sufficient notice of dissolution, except as regards customers of the firm, is now affirmed by s. 36 of the Act (set out *ante*). By s. 37 any partner may publicly notify the dissolution, and may require the concurrence of his co-partners in all necessary acts. This last provision enacts the rule laid down in *Hendry* v. *Turner*, 32 Ch. D. 355, cited Vol. IV., p. 376, note (*e*).

Estate of deceased partner not liable.

P. 295, line 39.—That the estate of a deceased partner is not liable for debts contracted after the death, see s. 36, sub-s. (3) of the Act (set out *ante*).

Of Articles of Partnership.

Variation by consent of terms of partnership.

P. 298, line 27.—That any of the provisions of partnership articles may be waived or varied by the consent of all the partners, see s. 19 of the Partnership Act, 1890 (set out *ante*).

Expulsion.

P. 302, line 8.—No majority of the partners can expel any partner, unless expressly empowered so to do by the partnership articles: see s. 25 of the Partnership Act, 1890 (set out *ante*).

General clauses.

P. 305, line 32.—The general clause often inserted to the effect that partners are to give full information and render

true accounts may now be omitted, in reliance on s. 28 of the Act (set out *ante*).

Power for majority to decide disputes.

P. 306, line 19.—Inasmuch as any difference as to ordinary matters may be decided by a majority of the partners it is not of course necessary to insert in the articles an express clause to that effect: see s. 24, subs. (8) of the Act (set out *ante*), but as the majority here spoken of is apparently a majority of numbers, not of interest, and as "ordinary matters" are not defined, some more specific clause modifying the statutory form might be advisable.

Partnership books.

P. 306, line 23.—It is now unnecessary to insert an express clause as to the custody of and right to inspect the partnership books of account, see s. 24, sub-s. (9), of the Partnership Act, 1890 (set out *ante*).

Valuation of share on bankruptcy.

P. 308, line 28.—In *Collins* v. *Barker*, [1893] 1 Ch. 578, *Stirling*, J., held that a clause in the partnership articles providing, in the event of bankruptcy, for the valuation of the partner's share, and payment of such valuation by instalments was not binding on the trustee in bankruptcy. See also Vol. IV. p. 385, note (*q*), and *post*, p. 266.

Valuation on death of partner.

P. 310, line 28.—The decision in *Pettyt* v. *Janeson* has been followed in *Hunter* v. *Dowling*, [1893] 1 Ch. 391, affirmed by C. A. 37 Sol. J. 476.

Clause that executors shall succeed to share not compulsory.

P. 313, line 5.—After *Brooke* v. *Garrod*, add *Lancaster* v. *Allsup*, W. N. 1887, p. 134, 57 L. T. 53, where the Court refused to compel the executors to become partners against their will, and treated the partnership as dissolved from the date of the deceased partner's death.

Goodwill and right to use firm-name.

P. 315, line 2.—After *Davis* v. *Hodgson*, add *Wilson* v. *Williams*, 29 L. R. Ir. 176.

P. 315, line 21.—In *Chappell* v. *Griffith*, W. N. 1885, p. 190, 53 L. T. 459, it was held, that upon a dissolution, in the absence of any special agreement to the contrary, either partner has a *primâ facie* right to use the name of the old firm unless by so doing he involves his late partner in risk. But in *Gray* v. *Smith*, 43 Ch. D. 208, C. A., where G. S. and B. carried on business under the firm-name of G. S. & B., it was held that on the retirement of S. & B., without any express assignment of the goodwill or agreement with

reference to the use of the firm-name, G. was not entitled to continue to use the firm-name. Compare also *Vernon* v. *Hallam*, 34 Ch. D. 748; *Chatteris* v. *Isaacson*, 57 L. T. 177; *Smith* v. *McBride*, 16 C. of S. Cas. 36, Sc.; *Thynne* v. *Shove*, 45 Ch. D. 577; *Wilson* v. *Williams*, *supra*.

Soliciting customers of old firm.

P. 317, line 1.—In *Vernon* v. *Hallam*, 34 Ch. D. 748, *Stirling*, J., refused to grant an injunction to restrain the vendor of a business and its goodwill from soliciting customers of the old business to deal with him. The learned judge considered that *Labouchere* v. *Dawson* had in effect been overruled by the Court of Appeal in *Pearson* v. *Pearson*, and was therefore no longer binding upon him. See also *Re Irish*, *Irish* v. *Irish*, 40 Ch. D. 49, where *North*, J., refused to restrain a receiver and manager of a business who had been appointed by the Court from soliciting customers of the business, after such business had been sold by the Court, on the ground that this restriction was not a condition of his employment. It seems clear, therefore, that the right of a retired partner to solicit the customers of the old firm can only be curtailed by express agreement.

Arbitration clause.

P. 318, line 17.—As to stay of proceedings in an arbitration between partners, see *Lyon* v. *Johnson*, 40 Ch. D. 579. An arbitration clause in partnership articles does not oust the jurisdiction of the Court to appoint a receiver: *Pini* v. *Roncoroni*, [1892] 1 Ch. 633.

Powers of arbitrators.

P. 318, *ad fin.*—See generally as to the powers of arbitrators in references between partners, *ante*, p. 68.

Stamps.

P. 319, *ad fin.*—As to stamps on articles and assignments, &c., by partners, see *post*, *sub tit.* STAMPS.

JOINT STOCK COMPANIES.

Cost-book Mining Companies.

Stannaries Act, 1887.

Pp. 323 to 326.—The Stannaries Act, 1869, is amended by the Stannaries Act, 1887 (50 & 51 Vict. c. 43). A considerable part of the Amending Act is taken up with provisions relating to payment of wages and other matters affecting the interests of persons employed by cost-book mining companies. The sections which are material to the conveyancer are as follows:—

Sect. 19.—Mortgages of mining plant, &c., to be registered.

Sect. 20.—Copies of grants, leases, &c., to be filed.

Sect. 21.—Valuation of relinquished shares.

Sect. 22.—Relinquishment of shares made within six weeks of stoppage of mine void.

Sect. 23.—Accounts to be entered in cost-book.

Sect. 24.—Penalty for false entries.

Sect. 25.—Meetings to be held once in every sixteen weeks.

Sect. 26.—Accounts to be printed and circulated.

Sect. 27.—As to amalgamation of adjoining mines.

Sect. 28.—Winding-up petitions to be presented in Stannaries Court.

Sect. 30.—S. 17 (as to interest on judgments) of stat. 1 & 2 Vict. c. 110, to apply to Stannaries Court.

Sect. 31.—Companies working mines within the Stannaries and registered under the Companies Act, 1862, to be registered in duplicate under this Act.

Sect. 32.—Returns required by s. 26 of the Companies Act, 1862 (exclusive of list of members) to be registered at the Stannaries Court.

Preliminary Contracts, &c.

Preliminary contract.

P. 328, note (*g*).—After *Northumberland Avenue Hotel Co.*, add *Howard* v. *Patent Ivory Manufacturing Co., Re Patent Ivory, &c., Co.*, 38 Ch. D. 156.

Issue of shares at a discount.

P. 330, line 4.—The issue of shares at a discount by a limited company incorporated under the Companies Act, 1862,

is, as against the creditors of such company, invalid, even though the contract is registered under s. 25 of the Companies Act, 1867: *Ooregum Gold Mining Co. of India* v. *Roper*, [1892] A. C. 125. The decision of the Court of Appeal in *Re British Farmers Co.*, was affirmed by the House of Lords *sub nom. Burlinshaw* v. *Nicholls*, 3 App. Cas. 1004.

C. A. Act, 1867, s. 38.

P. 330, line 29.—A verbal contract is within s. 38 of the Companies Act, 1867, and should be stated in the prospectus: *Capel* v. *Sim's Ship Composition Co.*, W. N. 1888, p. 97, 58 L. T. 807, 36 W. R. 689, 57 L. J. Ch. 713.

Misrepresentation.

P. 331, line 13.—After *Bellairs* v. *Tucker*, add *Ex parte Hale, Re London & Provincial Electric, &c., Co.*, 55 L. T. 670; *Ex parte Vickers, Re British Burmah, &c., Co.*, W. N. 1887, p. 101, 56 L. T. 815; *Ex parte Carling, Re London & Leeds Bank*, W. N. 1887, p. 31, 56 L. T. 115, 35 W. R. 344, 56 L. J. Ch. 321; *Re Metropolitan Coal Consumers Association, Wainwright's Case*, W. N. 1890, p. 3, affirmed 63 L. T. 429, C. A.; *Re Metropolitan Coal Consumers Association, Edwards' Case*, 64 L. T. 561; *Re Metropolitan Coal Consumers Association, Karberg's Case*, [1892] 3 Ch. 1, C. A.; *Scott* v. *Snyder Dynamite Projectile Co.*, 67 L. T. 104, C. A.

The prospectus.

P. 331, line 25.—The law relating to the liability of directors and others for statements in prospectuses and other documents soliciting applications for shares or debentures is now (since the decision of *Derry* v. *Peek*, 14 App. Cas. 337) materially altered by the Directors' Liability Act, 1890 (53 & 54 Vict. c. 64), which in effect provides that directors, promoters, and other persons who have authorized the issue of the prospectus shall be responsible for the statements therein contained, unless they can show that they had reasonable ground for believing such statements to be true (s. 3).

The Act is not retrospective (see s. 3, sub-s. (1), "after the passing of this Act").

The term "promoter" in this Act means a promoter who was a party to the preparation of that portion of the prospectus containing the untrue statement, but a person merely acting in a professional capacity (*e.g.*, a solicitor), is expressly excluded (s. 3, sub-s. (2)).

Allotment of shares.

P. 331, line 37.—As to the validity of allotment of shares,

see *Ex parte Steele, Re Portuguese Consolidated Copper Mines*, 42 Ch. D. 160, C. A.; *Re Portuguese Consolidated Copper Mines, Ex parte Badman*, 45 Ch. D. 16, C. A.; *Ex parte Hall, Re Northern Electric, &c., Co.*, 63 L. T. 369, 2 Meg. 288; *Re Staffordshire Gas & Coke Co., Ex parte Nicholson*, 66 L. T. 413; *Chapman* v. *Sulphite Co.*, 16 C. of S. Cas. 837, Sc.

Memorandum of Association.

Conclusiveness of certificate of incorporation.

P. 332, line 25.—As to the conclusiveness of a certificate of incorporation, see *Hill* v. *Hill*, 55 L. T. 769, 35 W. R. 137; *Re National Debenture, &c., Corporation*, [1891] 2 Ch. 505, C. A.; from which cases it would appear that though under s. 18 of the Companies Act, 1862 (set out Vol. IV. p. 350), a certificate of incorporation is conclusive evidence as to matters of form and regularity of procedure required by the Act, the section does not apply to cases where it is shown that the company registered had in fact no legal existence as a company capable of registration under s. 6 of the Act. The burden of proof is upon those who dispute the validity of the certificate.

Who may subscribe the memorandum.

In *Re Laxon & Co.* (No. 2), [1892] 3 Ch. 555, the memorandum was subscribed by an infant who, on coming of age, repudiated the shares. It was held that, inasmuch as a contract by an infant is voidable only, not void, such repudiation did not affect the validity of his signature to the memorandum so as to avoid the incorporation of the company. It is sufficient if the memorandum be signed by an agent under a mere verbal authority from his principal: *Re Whitley Partners*, 32 Ch. D. 337, C. A.

Name of company.

P. 335, line 19.—After *Estcourt* v. *Estcourt, &c., Co.*, add *Tussaud* v. *Tussaud*, 44 Ch. D. 678.

Repeal.

P. 335, line 33.—Sect. 81 of the Companies Act, 1862, is repealed by the Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63).

Powers of company to purchase its own shares.

P. 335, *ad fin.*.—After *Ashbury Railway, &c., Co.* v. *Riche*, add *Trevor* v. *Whitworth*, 12 App. Cas. 409; *Howard* v. *Patent Ivory Manufacturing Co., Re Patent Ivory Manufacturing Co.*, 38 Ch. D. 156, 169. In *Trevor* v. *Whitworth*

(*supra*), it was held that a power in the articles for the company to purchase its shares was a power not only outside the scope of the memorandum, but unauthorised by the scheme of the Companies Acts.

The Companies (Memorandum of Association) Act, 1890.

P. 336, line 20.—By the Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62), further powers are given to companies with respect to certain instruments under which they may be constituted or regulated, and especially a power, with the sanction of the Court, to alter the memorandum of association. Sect. 1 of this Act enacts as follows:—

Power for company to alter objects or form of constitution subject to confirmation by Court.

1.—(1.) Subject to the provisions of this Act, a company registered under the Companies Acts, 1862 to 1886, may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, so far as may be required for any of the purposes herein-after specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the Court which has jurisdiction to make an order for winding up the company.

(2.) Before confirming any such alteration the Court must be satisfied—

(*a*) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(*b*) That, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court.

Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

(3.) An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper.

(4.) The Court shall, in exercising its discretion under this Act, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit,

adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect; Provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase.

(5.) The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

(*a*) To carry on its business more economically or more efficiently; or

(*b*) To attain its main purpose by new or improved means; or

(*c*) To enlarge or change the local area of its operations; or

(*d*) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Registration.

By s. 2, it is provided that the order confirming the alteration, together with the memorandum of association or deed of settlement so altered, or the substituted memorandum and articles of association shall be duly registered.

Meaning of "deed of settlement."

The expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, and not being an Act of Parliament, a royal charter, or letters patent (s. 3, sub-s. (3)).

The Act has already been the subject of numerous judicial decisions, of which the following are the most important:—

Decisions on the Act.

The jurisdiction of the Court to sanction any alteration is apparently limited by the grounds of confirmation specified in s. 1, sub-s. (5): see *Re Government Stock Investment Co.*, [1891] 1 Ch. 649, where it was held that the "main purpose" of the company (see sub-s. (5) (b)) being investment in Government securities its powers of investment could not be enlarged. But in *Re Foreign & Colonial Government Trust Co.*, [1891] 2 Ch. 395, the Court enlarged the powers of investment specified in the memorandum on the ground that the extension came within sub-s. (5) (d), and was a business which might be advantageously combined with the company's existing business of investment in a limited class of securities. See also as to sanction being given to extension of

objects under this sub-section, *Re Alliance Marine Assurance Co.*, [1892] 1 Ch. 300; *Re National Boiler Insurance Co.*, [1892] 1 Ch. 306; *Re Government Stock Investment Co.* (No. 2), [1892] 1 Ch. 597; *Re Ulster Marine Insurance Co.*, 27 L. R. Ir. 487. In *Re Indian Mechanical Gold Extracting Co.*, [1891] 3 Ch. 538, the Court acted under sub-s. (5) (*c*), and enlarged the area of the company's operations. In *Re The Empire Trust*, 64 L. T. 221, where the objects of the company were those of an investment and loan company, the Court authorised the objects of a guarantee and finance company to be added, and under the circumstances the usual advertisements were dispensed with: see also *Re Ulster Marine Insurance Co.*, 27 L. R. Ir. 487.

For examples, where the Court has sanctioned an alteration on the ground that the business would be carried on more economically or more efficiently within sub-s. (5) (*a*), see *Re Government Stock Investment Co.*, [1892] 1 Ch. 597; *Re Reversionary Interest Society*, [1892] 1 Ch. 615 (deed of settlement).

Change of name.

Where by altering the memorandum the nature of the company is so changed that its existing name is likely to mislead, the Court will, under sub-s. (3), impose as a condition that the name of the company be changed: *Re Foreign & Colonial Government Trust Co.*, [1891] 2 Ch. 395; *Re Indian Mechanical Gold Extracting Co.*, [1891] 3 Ch. 538; *Re Oriental Telephone Co.*, W. N. 1891, p. 153; *Re Alliance Marine Assurance Co.*, [1892] 1 Ch. 300; *Re National Boiler Insurance Co.*, [1892] 1 Ch. 306.

The Court has no jurisdiction to alter the memorandum where the company has only been registered under the Joint Stock Companies Act, 1856: *Re General Credit Co.*, W. N. 1891, p. 153.

General words.

P. 339, line 14.—After *Financial Association* v. *Kelk*, add *Studdert* v. *Grosvenor*, 33 Ch. D. 528, 538; *Re Red Rock Gold Mining Co.*, 61 L. T. 785.

Power to issue preference shares.

P. 340, line 27.—After *Re South Durham Brewery Co.*, add *Re Bridgewater Navigation Co.*, 39 Ch. D. 1, per *North*, J., at p. 10 (on appeal upon another point, 14 App. Cas. 525); *Re Barrow Hæmatite Steel Co.*, 39 Ch. D. 582.

Subscriber's shares.

P. 342, line 5.—After *Dent's Case*, add *Dalton Time Lock Co.* v. *Dalton*, 66 L. T. 704, C. A.

P. 342, line 23.—An agreement by a shareholder with the company to set off against future calls a present debt due to him by the company is a payment in cash within s. 25 of the Act of 1867: *Re Jones, Lloyd & Co., Limited*, 41 Ch. D. 159. A contract, duly filed, to issue fully paid-up shares for a consideration other than money, need not specify the number of the shares: *Re Delta Syndicate, Ex parte Forde*, 30 Ch. D. 153. Payment for shares in cash.

Articles of Association.

P. 344, line 25.—After *Re South Durham Brewery Co.*, add *Re Pyle Works*, 44 Ch. D. 534, C. A. Memorandum supplemented by articles.

Special Resolutions.

P. 353, line 5.—When a poll is demanded, the regulations in the articles must be strictly followed: *Re British Flax Producers Co.*, W. N. 1889, p. 7, 60 L. T. 215. Poll.

Reconstruction and Amalgamation of Companies.

P. 356, line 3.—The advantage of a reconstruction under the Joint Stock Companies Arrangement Act, 1870, is that the arrangement come to is binding on all parties: *Nicholl* v. *Eberhardt Co.*, 61 L. T. 489, C. A. Joint Stock Companies Arrangement Act, 1870.

P. 359, line 31.—In *Postlethwaite* v. *Port Philip, &c., Mining Co.*, 43 Ch. D. 452, *Stirling*, J., upheld the insertion of a clause in a reconstruction scheme whereby a limit of time was fixed within which an option to the shareholders of the old company to purchase the shares of the new company was to be exercised. As to the time within which notice of dissent must be given, see *Re London & Westminster Bread Co.*, W. N. 1890, p. 3, 62 L. T. 224, 38 W. R. 277. Dissentient shareholder.

The provisions of ss. 161 and 162 of the Companies Act, 1862, may be virtually excluded by stating in the memorandum that the company is formed to sell its undertaking for shares in some other company, and that such shares may be divided among the members in specie: *Cotton* v. *Imperial and Foreign, &c., Corporation*, [1892] 3 Ch. 454.

PRECEDENTS.

PRECEDENT I.—ARTICLES OF PARTNERSHIP BETWEEN TRADERS (CONCISE FORM).

Advertisement of dissolution.

P. 376, note (*e*).—*Hendry* v. *Turner* is reported 32 Ch. D. 355. See further as to advertisement of dissolution, s. 37 of the Partnership Act, 1890, *ante*, p. 241.

Arbitration clause.

P. 378, clause 18.—For "Common Law Procedure Act, 1854," read now "Arbitration Act, 1889," and omit the last sentence of this clause. See further as to the effect of arbitration clauses in partnership deeds, *ante*, p. 68.

PRECEDENT II.—ARTICLES OF PARTNERSHIP BETWEEN TRADERS (COMMON FORM).

Purchase of bankrupt partner's share.

P. 385, note (*q*).—It is now settled that such a clause would be of no effect against a trustee in bankruptcy: *Collins* v. *Barker*, [1893] 1 Ch. 578, and see *ante*, p. 257.

PRECEDENT VI.—ARTICLES OF PARTNERSHIP BETWEEN PATENTEE AND ANOTHER.

Executors carrying on the testator's business.

P. 421, note (*k*).—After *Cutbush* v. *Cutbush*, add *Dowse* v. *Gorton*, [1891] A. C. 190. See also *Re Owen, Frisby* v. *Owen*, 66 L. T. 718. And after *M'Neillie* v. *Acton*, add *Re Dimmock, Dimmock* v. *Dimmock*, 52 L. T. 494.

PRECEDENT XXVII.—ARTICLES OF ASSOCIATION.

Issue of shares at discount.

P. 522, clause 7.—Omit words "at a discount." The point as to whether a company could authorise the issue of shares at a discount by its articles was formerly the subject of some question, but is now definitely settled in the negative: *Ooregum Gold Mining Co. of India* v. *Roper*, [1892] A. C. 125.

Power of company to

P. 523, note (*d*).—A company cannot by its articles give

itself power to purchase its own shares: *Trevor* v. *Whitworth*, 12 App. Cas. 409; see also *Re Walker & Hacking*, W. N. 1887, p. 202, 57 L. T. 763. purchase its own shares.

P. 525, note (*h*).—After *Société Générale de Paris* v. *Walker*, add *Bradford Banking Co.* v. *Briggs*, 12 App. Cas. 29. Notice of equitable charge.

P. 525, note (*i*).—After *Re Bahia, &c., Rail. Co.*, add *Tomkinson* v. *Balkis Cons. Co.*, [1891] 2 Q. B. 614, C. A., affirmed by H. L. sub nom. *Balkis Cons. Co.* v. *Tomkinson*, W. N. 1893, p. 130. Certificates of shares.

Freeman v. *Cooke* is reported 2 Exch. 654, *not* in L. R.

P. 526, note (*k*).—After *Re Stockton, &c., Rail. Co.*, add *Bradford Banking Co.* v. *Briggs*, 12 App. Cas. 29; *Bank of Africa* v. *Salisbury Gold Mining Co.*, [1892] A. C. 281. Company's lien on shares.

P. 542, note (*h*).—As to the effect of a clause providing for the remuneration of directors out of "net profits," see *Frames* v. *Bultfontein Mining Co.*, [1891] 1 Ch. 141. Remuneration of directors.

P. 543, note (*h*).—After *Dunstan* v. *Imperial &c., Co.*, add *Re Leicester Club, &c., Co.*, 30 Ch. D. 629, at p. 632.

Precedent XXX.—Preliminary Agreement for Sale of Business.

P. 592, note (*c*).—It has been decided that a private partnership cannot incorporate itself as a joint stock company so as to be registered under Part VII. of the Companies Act, 1862, merely for the purpose of being forthwith wound up under that Act: *Reg.* v. *Registrar of Joint Stock Companies, Ex parte Johnston*, [1891] 2 Q. B. 598, C. A. Private companies.

In that case the Lords Justices expressed a doubt whether an unincorporated company, formed by mere contract between the members of a partnership, is capable of being registered as a limited company under Part VII. of the Act.

Precedent XXXI.—Agreement on Reconstruction.

P. 596, clause 6.—Omit words "and may be allotted." See as to issue of shares at a discount, *ante*, p. 266. Allotment of shares.

PATENT AND COPYRIGHT.

PRELIMINARY DISSERTATION.

PATENTS.

Practice as to Grants of Patents.

Patents, etc., Act, 1888.

P. 599, *ad fin.*—Since the publication of Vol. IV. of this Work, the Patents, &c., Act, 1883, has been amended by the Patents, Designs, and Trade Marks Act, 1888 (51 & 52 Vict. c. 50).

Rules of 1890.

Rules have been issued by the Board of Trade by virtue of the provisions of the Patents and Trade Marks Acts, 1883 to 1888, which may be cited as the Patents Rules, 1890, and which came into operation on the 31st of March, 1890; all general rules previously made under the Patents and Trade Marks Acts are repealed.

The alterations introduced by the amending Act, and by the Rules of 1890, so far as they affect points referred to in this dissertation, will be noticed in their appropriate places.

Grant of patent to several.

P. 600, line 24.—A patent may be granted to several persons jointly, although some of them may not be the true and first inventors: see s. 5 of the Patents Act, 1885 (48 & 49 Vict. c. 63).

Application from abroad.

P. 601, *ad fin.*—Rule 27 of 1883 is superseded by r. 23 of 1890, which is identical.

Declaration in support of application.

P. 603, line 2.—The declaration in support of an application for a patent may be made by way of statutory declaration or otherwise as may be prescribed: see s. 2 of the Patents Act, 1885. The present rules of 1890 do not require a statutory declaration.

Proceedings on application.

P. 604, *ad fin.*—Rule 19 of 1883 is superseded by r. 16A. of 1890, which is identical.

P. 604, note (*c*).—The Forms of applications for Patents given in the Second Schedule to the Rules of 1890 omit the words "solemnly and sincerely" before the word "declare" in the first paragraph, and omit altogether the statutory declaration at the end of the Forms of 1883. In other respects the Forms of 1890 follow those of 1883. A further Form, A 2, is given in the Second Schedule to the Rules of 1890 (Form A 2, Application for Patent under International and Colonial Arrangements).

Power of Comptroller to deal with applications.

P. 606, lines 6 *et seq.*—Sect. 7 of the Act of 1883 has been repealed, but re-enacted with certain alterations by the Patents, &c., Act, 1888 (51 & 52 Vict. c. 50), s. 2. Under this section, upon an adverse report of the examiner, the Comptroller may refuse to accept the application, or may require amendment, but in either case subject to appeal to the law officer; and where after a patent has been sealed another application for a patent is duly made the Comptroller may deal with the matter. As to the exercise by the Comptroller of his discretionary powers, and as to his power to require the statement or personal attendance of the applicant, see rr. 11 and 13 of 1890; and as to notice and advertisement of acceptance, see r. 21 of 1890.

Extension of time.

P. 606, line 31.—As to the extension of the period for delivery of complete specification, see the Act of 1885, s. 3. Month means calendar month, see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3.

P. 607, line 16.—As to the extension of the time for making the application, see the Act of 1885, s. 3.

P. 607, line 21.—As to inspection on acceptance of a complete specification, see r. 22 of 1890.

Opposition to grant of patent.

P. 607, lines 30 to 35.—Omit the words "or on the ground of an examiner" to "a previous application" inclusive, and substitute the following words, "or on the ground that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification." See s. 4 of the Patents, &c., Act, 1888. As

to the present procedure in cases of opposition before the Comptroller, see rr. 34 to 44 of the Rules of 1890.

The following are some of the more important decisions on one or other of the three present grounds of opposition to the grant of a patent:—

On the first ground: *Heald's Patent*, 8 R. P. C. 429; *Higgins' Patent*, 9 R. P. C. 74.

On the second ground: *Kilner's Patent*, 8 R. P. C. 35; *Stell's Patent*, 8 R. P. C. 235; *McHardy's Patent*, 8 R. P. C. 431; *Welch's Patent*, 8 R. P. C. 442; *Ross's Patent*, 8 R. P. C. 477; *Tattersall's Patent*, 9 R. P. C. 150; *Van Gelder's Patent*, 9 R. P. C. 325.

On the third ground: *Higgins' Patent*, 9 R. P. C. 74. See further, "Johnson's Patentee's Manual," 5th edition (1890), pp. 159 *et seq.*, "Edmunds on Patents" (1890), pp. 167 *et seq.*

Fees.

P. 609, note (*f*).—A list of fees payable on and in connection with Letters Patent is given in the first schedule to the Rules of 1890, whereby the fees stated in this note are re-imposed with additional fees. As to the mode of payment, by stamps or otherwise, of these fees, see notice as to fees issued by the Treasury, 14th December, 1892.

Validity of Patent with reference to Subject-matter.

Additions and Improvements.

New combination of old materials.

P. 614, line 6.—After *Clark* v. *Adie*, add *Proctor* v. *Bennis*, 36 Ch. D. 740, C. A., in which case *Bowen*, L.J., pointed out that additions may be an improvement, and that omissions may be an improvement, but that the mere fact that there is an addition or an omission does not enable a person to take the substance of another's patent. The question is not whether the addition is material or whether the omission is material, but whether what has been taken is the substance and essence of the invention. His lordship said that this seemed to him to be the true test as propounded by the House of Lords in *Clark* v. *Adie*.

P. 614, line 21.—After *Parkes* v. *Stevens*, add *Fox* v. *Kensington, &c., Electric Lighting Co.*, [1892] 3 Ch. 424, C. A. Adaptation of process to new purpose.

P. 615, line 22.—The decision of the Court of Appeal in *Badische Anilin und Soda Fabrik* v. *Levinstein*, was reversed by the House of Lords in 12 App. Cas. 710, but such reversal does not appear to affect the general rule here stated. Principles not subject of patent.

Novelty of Invention.

P. 624, line 6.—As to what is sufficient publication to defeat a patent, see *Otto* v. *Steel*, 31 Ch. D. 241; *Ellington* v. *Clark* (No. 1), 58 L. T. 40, 818, C. A.; *Harris* v. *Rothwell*, 35 Ch. D. 416, C. A.; *British Tanning Co.* v. *Groth*, 64 L. T. 21, 8 R. P. C. 113; *Anglo-American Brush Electric Light Corporation* v. *King*, [1892] A. C. 367; *Pickard* v. *Prescott*, [1892] A. C. 263, 9 R. P. C. 195; and as to particulars of objection on the ground of public knowledge, see *Boyd* v. *Farrar*, W. N. 1887, p. 157, 57 L. T. 156; *Holliday* v. *Heppenstall*, 41 Ch. D. 109, C. A.; *Ashworth* v. *Taylor*, 9 R. P. C. 193; *Heyes* v. *Hallmark*, 9 R. P. C. 25. Public user or knowledge.

Specification and Title.

P. 625, *ad fin.*—By the Patents Act, 1886 (49 & 50 Vict. c. 37) s. 2, it is provided that the same drawings may accompany both specifications. Drawings.

P. 630, line 20.—An inventor has no right to put into his final specification as part of his invention something which he had not invented, at the time when he filed his provisional specification. In such a case he may take out a separate patent for the subsequent invention, *Edison, &c., Light Co.* v. *Woodhouse*, 32 Ch. D. 520. See further as to variance between provisional and complete specification: *Moseley* v. *Victoria Rubber Co.* (No. 2), 57 L. T. 142; *Woodward* v. *Sansum*, 56 L. T. 347; *Gaulard & Gibbs' Patent* (No. 3), W. N. 1889, p. 60, C. A.; *Vickers* v. *Siddell*, 15 App. Cas. 496; *Nuttall* v. *Hargreaves*, [1892] 1 Ch. 23, C. A.; *Lane-Fox* v. *Kensington, &c., Lighting Co.*, [1892] 3 Ch. 424. Variance between provisional and complete specification.

Best mode of operation.

P. 637, line 29.—After *Heath* v. *Unwin*, add *Moseley* v. *Victoria Rubber Co.* (No. 2), 57 L. T. 142.

Drawings.

P. 641, note (*k*).—Rules 28—30 of 1883 are superseded by rr. 30—33 of 1890.

Amendment of specification.

P. 649, *ad fin.*.—Sub-s. (10) of s. 18 is now to be read as follows:—

(10.) "The foregoing provisions of this section do not apply when, and so long as any action for infringement or proceeding for revocation of a patent is pending" (see s. 5 of the Patents, &c., Act, 1888). As to the construction of s. 18, see *Kelly* v. *Heathman*, 45 Ch. D. 256.

Assignments and Licenses.

Entry of assignments.

P. 651, line 23.—By s. 21 of the Patents, &c., 1888, the provisions of s. 87 of the Act of 1883 as regards assignments are expressly rendered subject to the provisions of the Act of 1888, as well as to any rights appearing from the register.

Co-owners.

P. 653, line 7.—A co-owner of a patent is entitled to work it for himself, and is not liable to account for the profits to the owners of the other shares: *Steers* v. *Rogers*, [1893] A. C. 232.

Registration.

P. 653, line 28.—An equitable assignment of a patent or of an interest or share therein may be put upon the register: *Casey's Patent*, [1892] 1 Ch. 104, C. A.

P. 654.—Rule 70 of 1883 is now superseded by r. 73 of 1890, which is identical. Rule 65 of 1883 is superseded by r. 68 of 1890, which is similar in effect. As to the signature of the request, the particulars to be stated therein and production of documents in support thereof and other matters, see rr. 69—72 of 1890. A Form of request (Form L) is given in the second schedule to the Rules.

Compulsory licenses.

P. 654.—Rules 57—63 of 1883 are superseded by rr. 60—66 of 1890. Forms of application for compulsory grant of license and of the accompanying petition (Forms H, H 1) are given in the second schedule to the Rules of 1890.

P. 654, *ad fin.*—A license to use a patent, whether general or exclusive, which is not a license coupled with a grant, does not confer upon the licensee any property in the patent so as to enable him to sue in his own name without joining the patentee: *Heap* v. *Hartley*, 42 Ch. D. 461, C. A., see *sub tit.* LICENSES, *ante*, p. 161. As to the grant of a license before filing the complete specification, see *Otto* v. *Singer*, 62 L. T. 220. Distinction between assignment and license.

INFRINGEMENT OF PATENT.

P. 659, line 17.—After *United Telephone Co.* v. *Harrison*, add *Proctor* v. *Bennis*, 36 Ch. D. 740, C. A.; *United Telephone Co.* v. *Nelson*, W. N. 1887, p. 193; *Ehrlich* v. *Ihlee*, W. N. 1888, p. 50; *Morgan* v. *Windover*, W. N. 1888, p. 80, C. A.; *Automatic Weighing Machine Co.* v. *National Exhibitions Association*, 9 R. P. C. 41, C. A.; *Wenham Gas Co.* v. *Champion Gas Lamp Co.*, 9 R. P. C. 49, C. A.; *Boyd* v. *Horrocks*, 9 R. P. C. 77, H. L. Combinations.

P. 659, line 24.—The decision of *Pearson*, J., in *Badische Anilin und Soda Fabrik* v. *Levinstein*, was restored by the House of Lords in 12 App. Cas. 710, reversing the decision of the majority of the Court of Appeal (29 Ch. D. 366, C. A.).

P. 660, line 26.—After *Nobel's Explosive Co.* v. *Jones*, add *United Telephone Co.* v. *London & Globe, &c., Co.*, 26 Ch. D. 766. User.

P. 662, line 3.—As to the refusal by the Court to grant an injunction in a case where, although the patent had been infringed, there was no intention to infringe it again, see *Proctor* v. *Bayley*, 42 Ch. D. 390, C. A. Injunction.

COPYRIGHT.

Property in Unpublished Works.

Author's right before publication.

P. 666, line 38.—The statement of *Erle*, J., in *Jeffreys* v. *Boosey*, as to the rights of authors over their unpublished compositions has been followed with approval by the House of Lords in *Caird* v. *Sime*, 12 App. Cas. 326. See also *Tuck* v. *Priester*, 19 Q. B. D. 629, 640, C. A.

Letters.

P. 670, note (*c*).—In *Earl of Lytton* v. *Devey*, W. N. 1884, p. 203, 52 L. T. 121, *Bacon*, V.-C., is reported to have held that the ownership of letters (by which his lordship appears to have meant the ownership of the documents themselves) and the right to retain such documents is and remains in the person to whom they are sent, subject to the right of the writer and sender to restrain publication of their contents unless such publication be necessary for the vindication of character. It is submitted that this decision does not affect the general law here stated to the effect that the literary property, as regards publication, remains in the writer. See also per *North*, J., in *Pollard* v. *Photographic Co.*, 40 Ch. D. 345, at p. 352.

Publication by gratuitous circulation.

P. 673, line 30.—After *Duke of Queensberry* v. *Shebbeare*, add *Kenrick* v. *Danube Collieries, &c., Co.*, 39 W. R. 473.

P. 673, line 33.—After *Novello* v. *Sudlow*, add *Ager* v. *Peninsular, &c., Navigation Co.*, 26 Ch. D. 637.

Lectures.

P. 675, note (*i*).—After *Nicols* v. *Pitman*, add *Caird* v. *Sime*, 12 App. Cas. 326.

Literary Copyright by Statute.

Subject of Copyright.

Sheet of letterpress.

P. 677, note (*m*).—As to the meaning of "sheet of letterpress," see *Hildesheimer & Faulkner* v. *Dunn & Co.*, W. N. 1891, p. 86, 64 L. T. 452 (Christmas card). In *Cate* v.

Devon, &c., Newspaper Co., 40 Ch. D. 500, *North*, J., approved of the decision of *Jessel*, M.R., in *Walter* v. *Howe*, and said: "I think at the present day it is clear that there is copyright in a newspaper as a sheet of letterpress."

Chart or plan.

P. 677, note (*o*).—A "chart or plan" need not be typographical to entitle it to protection: see *Hollinrake* v. *Truswell*, [1893] 2 Ch. 377, where these words were held to include a pattern of the sleeve of a dress.

Copyright in title of book.

P. 692, note (*c*).—Registration of the title of a newspaper confers no exclusive right to the name: *Licensed Victuallers' Newspaper Co.* v. *Bingham*, 38 Ch. D. 139, 143, C. A. The jurisdiction of the Court to prevent the use of the same name is analogous to that exercised in the case of trade-marks, and exists even where no fraudulent intention is shown. The test is, not only whether the assumption of the name is calculated to deceive the public (see *Walter* v. *Emmott*, W. N. 1885, p. 156, 53 L. T. 437, C. A.), but also whether in fact there is a probability of the plaintiff being injured by such deception: *Borthwick* v. *Evening Post*, 37 Ch. D. 449, C. A.

Headings of directory.

P. 693, note (*d*).—In a trades directory the headings are the subject of copyright, though the rest of the matter consists entirely of advertisements: *Lamb* v. *Evans*, [1893] 1 Ch. 218, C. A.

Employment of writer by another person.

P. 696, *ad fin.*—As to copyright in articles composed at the joint expense of several proprietors of different newspapers or serial publications, see *Trade Auxiliary Co.* v. *Middlesborough, &c., Protection Association*, 40 Ch. D. 425, C. A.; *Cate* v. *Devon, &c., Newspaper Co.*, 40 Ch. D. 500. A person claiming copyright in respect of matter written by another person must prove payment to the writer: *Collingridge* v. *Emmott*, W. N. 1887, p. 216, 57 L. T. 864.

Entry of title.

P. 700, line 23.—As to the necessity for correctly registering the title of a book or other publication, see *Harris* v. *Smart*, W. N. 1889, p. 128, C. A.

Time of publication.

P. 700, line 32.—After *Collette* v. *Goode*, add *Collingridge* v. *Emmott, supra*; see also *Hayward Brothers* v. *Lely & Co.*, 56 L. T. 418.

Name and address of proprietor.

P. 701, line 11 *et seq.*—*Nottage* v. *Jackson* is also reported

11 Q. B. D. 627, C. A. After *Weldon* v. *Dicks*, add *London Printing, &c., Alliance* v. *Cox*, [1891] 3 Ch. 291, C. A.

Assignment of Copyright.

License not an assignment.

P. 708, *ad fin.*—After *Reade* v. *Bentley*, add *London Printing, &c., Alliance* v. *Cox, supra.*

Infringement of Copyright.

Dramatisation of novel.

P. 731, line 3.—After *Reade* v. *Lacy*, add *Schlesinger* v. *Turner*, W. N. 1890, p. 224, 63 L. T. 764. Where an author first publishes a novel and then dramatizes it, he cannot restrain the publication by another person of another dramatized version made directly from the novel without the help of the author's dramatised version: *Schlesinger* v. *Bedford*, W. N. 1890, p. 224, 63 L. T. 762. But though a dramatic representation of a novel is not of itself an infringement of the literary copyright, such copyright will be infringed by the multiplication of copies of the play, though made for acting purposes, and not for sale, if such copies contain passages copied, taken, or colourably altered from the novel: *Warne* v. *Seebohm*, 39 Ch. D. 73.

Protection of future numbers of periodical.

P. 735, line 26.—As to the extension of an injunction so as to protect the contents of future numbers of a periodical of which the first number has alone been registered, see *Bradbury* v. *Sharp*, W. N. 1891, p. 143.

Dramatic and Musical Copyright.

Penalty or damages.

P. 738, *ad fin.*—Sect. 2 of the stat. 3 & 4 Will. 4, c. 15, is amended by s. 1 of the Copyright (Musical Compositions) Act, 1888 (51 & 52 Vict. c. 17), which provides that the

penalty or damages to be awarded in respect of unauthorised representations shall be such as the Court or judge shall deem reasonable, and the Court or judge may award a less sum than forty shillings, or a nominal penalty, or nominal damages, as the justice of the case may require.

Copyright in musical work written for another person.

P. 740, line 24.—After *Wallerstein* v. *Herbert*, add *Eaton* v. *Lake*, 20 Q. B. D. 378, C. A., where on the finding of the jury that the music composed by the plaintiff was a substantial and independent musical composition and that the plaintiff had not sold his rights therein to his employer, it was held that the composer retained his musical copyright in the composition.

Rights of co-owners.

P. 741, line 29.—Any one or more of several co-owners of a play may maintain an action for infringement of the entire dramatic copyright, *Lauri* v. *Renard*, [1892] 3 Ch. 402, C. A.

Costs.

P. 742, line 31.—Sect. 4 of the Copyright (Musical Compositions) Act, 1882, is repealed by the Copyright (Musical Compositions) Act, 1888. Costs are now in the absolute discretion of the judge, see s. 2 of the later Act. By s. 3 of the same Act the proprietor of any place of dramatic entertainment is not to be liable to any penalty or damages in respect of any unauthorized representation or performance of any musical composition, unless he wilfully causes or permits such representation or performance, knowing it to be unauthorized. By s. 4 of the Act its provisions are not to apply to a representation or performance of any opera or stage play in any theatre or other licensed place of public entertainment.

Paintings, Drawings, and Photographs.

Meaning of "author."

P. 744, line 20.—The decision of the Court of Appeal in *Nottage* v. *Jackson* was followed by *Stirling*, J., in *Wooderson* v. *Tuck*, W. N. 1887, p. 209. As to who is the "author" of a drawing, see *Kenrick* v. *Lawrence*, 25 Q. B. D. 99. The property in the glass negative of a commissioned photograph is apparently in the photographer, but in such a case the property is subject to an implied contract not to sell or

Rights of photographer and customer.

publicly exhibit by way of advertisement or otherwise any copies of a customer's portrait without express or implied authority so to do: *Pollard* v. *Photographic Co.*, 40 Ch. D. 345.

Photograph from engraving.

P. 744, line 26.—After *Grave's Case*, add *Lucas* v. *Williams & Sons*, [1892] 2 Q. B. 113, C. A.

Registration.

P. 745, line 9.—The proprietor of a picture or drawing cannot assert his rights under the stat. 25 & 26 Vict. c. 68, until registration, and cannot prevent other persons from selling copies made prior to registration: *Tuck* v. *Priester*, 19 Q. B. D. 629, C. A.; *Troitzsch* v. *Rees*, W. N. 1887, p. 150; see also *Fishburn* v. *Hollingshead*, [1891] 2 Ch. 371, 380.

Sculpture.

Casts of fruit and leaves.

P. 752, line 18.—New and original casts of fruit and leaves are within the protection given to sculptures, models, &c., by the stat. 54 Geo. 3, c. 56: *Caproni* v. *Alberti*, W. N. 1891, p. 200, 65 L. T. 785, 40 W. R. 235.

Newspapers.

Copyright in news.

P. 752, *ad fin.*—The form of expression in which news are embodied is the subject of copyright, and an alleged practice of copying from one newspaper into another is no defence to an action for infringement of such right: *Walter* v. *Steinkopff*, [1892] 3 Ch. 489.

Registration.

P. 755, line 17.—In *Cate* v. *Devon, &c., Newspaper Co.*, 40 Ch. D. 500, it was held that the proprietor of a newspaper registered as a serial publication under the Copyright Act, 1882, may sue for infringement of copyright under that Act, though neither his name nor the title of the paper is registered under the Newspaper Libel and Registration Act, 1881.

Property in title.

As to property in the title of a newspaper, see the cases cited *ante*, p. 275.

Designs.

P. 757, line 6.—After *Houldsworth* v. *M'Crae*, add *Hecla Foundry Co.* v. *Walker, Hunter & Co.*, 14 App. Cas. 550, Sc.; *Moody* v. *Tree*, 40 W. R. 558, 9 R. P. C. 233. Meaning of "design."

P. 757, line 11.—After *Rogers* v. *Driver*, add *Walker, Hunter & Co.* v. *Falkirk Iron Co.*, 14 C. of S. Cas. 1072, Sc. Copyright or patent.

P. 757, line 19.—After *Le May* v. *Welch*, add *Re Read & Greswell's Design*, 42 Ch. D. 260; *Re Bach's Design*, 42 Ch. D. 661. Novelty.

P. 758, line 5.—After *Jewitt* v. *Eckhardt*, add *Woolley* v. *Broad*, [1892] 1 Q. B. 806, 811. Proprietor.

P. 758, note (*c*).—The Designs Rules of 1883 are repealed by the Designs Rules of 1890. Rule 21 of 1883 is superseded by r. 20 of 1890, which is identical. Designs Rules, 1890.

P. 758, note (*d*).—The form of application for the registration of a design (Form E. of the Second Schedule to the Designs Rules, 1890), is the same as the form given in the repealed rules.

P. 758, note (*e*).—Rules 6 and 8 of 1890 are the same as the repealed rules 6 and 8 of 1883.

P. 759, note (*f*).—Rule 9 of 1890 is identical with r. 9 of 1883.

P. 759, note (*g*).—Rule 5 of 1890 is identical with the repealed rule.

P. 759, note (*h*).—Rule 13 of 1883 is superseded by r. 12 of 1890, which is as follows:—

> "Before exercising any discretionary power given to the comptroller by the said Acts adversely to the applicant for registration of a design the Comptroller shall (if so required by the applicant within one month from the date of the Comptroller's objection), give the applicant an opportunity of being heard personally or by his agent by sending the applicant ten days' notice of a time when he may be so heard."

The rules 16—20 of 1883 are superseded by the rules 15—19 of 1890, which are identical.

Fees.

P. 760, note (*i*).—The First Schedule to the Designs Rules, 1890, is the same as the First Schedule to the repealed rules, 1883. As to the mode of payment of these fees, see the Treasury Order of the 14th Dec. 1892.

Publication.

P. 761, line 19.—After *Hunt* v. *Stevens*, add *Blank* v. *Footman, Pretty & Co.*, 39 Ch. D. 678.

Inspection of design.

P. 762, line 22.—By s. 6 of the Patents, etc., Act, 1888, it is enacted as follows:—"After subs. (1) of s. 52 of the principal Act [the Act of 1883], the following words shall be added; namely,—

"'Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.'"

Marks.

P. 763, line 14.—Add reference to *Blank* v. *Footman, Pretty & Co.*, *supra*.

Exhibitions.

P. 764, line 15.—As to the protection of designs exhibited at international exhibitions, see s. 3 of the Patents, etc. Act, 1886 (49 & 50 Vict. c. 37). Rule 36 of 1883 is superseded by r. 36 of 1890, which is identical, and the form of notice (Form L) in the Second Schedule to the Rules of 1890 corresponds with the form under the repealed rules.

Registration of transfers, etc.

P. 764, note (*k*).—The rules 22—27 of the Designs Rules, 1883, are superseded by the rules 21—26 of the Designs Rules, 1890, which are identical. The form of request (Form K) in the Second Schedule to the Rules of 1890 is the same as that in the 1883 Rules.

Piracy of registered design.

P. 766, line 17.—By s. 7 of the Patents, etc. Act, 1888, it is enacted as follows:—

"(1.) In section 58 of the principal Act the words 'or caused to be applied' shall be added after the word 'apply.'

"(2.) To the same section the following words shall be added: 'Provided that the total sum forfeited in respect of any one design shall not exceed £100.'"

Action for damages.

P. 766, line 28.—Sect. 59 of the Act of 1883, gives a right of action in respect of infringement of the copyright of a design to the registered proprietor exclusively; the holder of an exclusive license to sell goods manufactured according to the design cannot maintain such an action: *Woolley* v. *Broad*, [1892] 1 Q. B. 806.

International and Colonial Copyright.

English copyright in foreign painting.

P. 768, line 33.—In *Fishburn* v. *Hollingshead*, [1891] 2 Ch. 371, it was held by *Stirling*, J., that the owner of the English copyright in a foreign painting is entitled to sue in this country in respect of an infringement of such copyright, provided that he has registered himself under s. 4 of the Copyright Act, 1862, although he may not have registered his ownership under the International Copyright Acts.

International Copyright Act, 1886, s. 6.

P. 772, line 18.—As to the saving of rights and interests acquired in connection with the lawful production of a musical composition, previous to the publication of an Order in Council applying the Act to the subjects of a particular foreign country, see *Moul* v. *Groenings*, [1891] 2 Q. B. 443, C. A.; *Schauer* v. *Field*, [1893] 1 Ch. 35.

POWERS OF ATTORNEY.

PRELIMINARY DISSERTATION.

Erratum. **P. 865,** *ad fin.*—The reference to *Att.-Gen.* v. *Vigor* is 8 Ves. 256.

Authentication of power abroad. **P. 872, line 5, and note** (*n*).—Sects. 22 to 24 of the stat. 15 & 16 Vict. c. 86, are repealed by the Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), s. 6 of which Act (set out *ante*, p. 20), contains provisions as to oaths and notarial acts abroad.

Construction of foreign power. A foreign power of attorney will be construed according to the law of the country in which it is made, with the aid, so far as necessary, of competent translators and foreign lawyers; but if it appears that the power is intended to be acted on in England, the extent of the authority conferred must be determined by English law: *Chatenay* v. *Brazilian Submarine Telegraph Co.*, [1891] 1 Q. B. 79, C. A.

Forged power. **P. 873, line 37.**—After *Taylor* v. *Midland Rail. Co.*, add *Merchants of the Staple* v. *Bank of England*, 21 Q. B. D. 160.

Extent of attorney's authority. **P. 875, note** (*o*).—After *Jarmain* v. *Hooper*, add *Morris* v. *Salberg*, 22 Q. B. D. 614, C. A.

Power to borrow. **P. 876,** *ad fin.*—Where a power of attorney impliedly confers an authority to borrow for the purposes of carrying on a business, such authority must be taken to include a power to borrow on special terms to meet an emergency; in such a case the lender is not bound to enquire whether the emergency has arisen, and may recover from the principal if he lent to the agent *bonâ fide* and without notice that the agent had exceeded his authority: *Montaignac* v. *Shitta*, 15 App. Cas. 357, P. C.

P. 878, line 4.—In *Hawksley* v. *Outram*, [1892] 3 Ch. 359, C. A., it was held that under a power to sell a business as

a going concern the attorney was, under the circumstances, authorised to sell under special stipulations as to deferring payment on terms that till final payment the vendors should share in the profits, and also under a stipulation that the vendors should not carry on a similar business within fifty miles of the business premises.

General words.

P. 880, line 9.—*Danby* v. *Coutts* is also reported 29 Ch. D. 514. Where an executor before leaving this country for a prolonged absence executed a power of attorney authorising the persons named generally to act for him about his concerns, engagements and business of every kind whatsoever; it was held that the Court could make to the attorneys for the benefit of the executor a grant with the will annexed: *Re Barker*, [1891] P. 251.

Sale of agent's property to principal.

P. 883, line 25.—After *Bentley* v. *Craven*, add *Cavendish-Bentinck* v. *Fenn*, 12 App. Cas. 652, where, however, the sale was upheld on the ground that at the time it was made the relation of principal and agent did not exist between the parties.

Attorney's liability to third persons.

P. 892, line 16.—After *Wilson* v. *Moore*, add *Blyth* v. *Fladgate*, [1891] 1 Ch. 337.

False representation as to authority.

P. 893, line 31.—*Collen* v. *Wright* was affirmed on appeal by the Exch. Ch., 8 E. & B. 647. As to the liability of a director of a company for falsely representing that he had authority to issue shares, see *Firbank's Exors.* v. *Humphreys*, 18 Q. B. D. 54, C. A.; and compare *Elkington* v. *Hürter*, [1892] 2 Ch. 452.

FORMS AND PRECEDENTS.

Common Forms.

Irrevocable power.

P. 912.—If it is desired to make a power of attorney, whether given for valuable consideration or not, irrevocable for a period not exceeding 12 months (see s. 9 of the Conveyancing Act, 1882), the following proviso should be added at the end of the deed:

"Provided always that these presents shall be irrevocable for a period of —— calendar months from the date hereof."

PRECEDENT XVIII.—POWER OF ATTORNEY TO RECEIVE RENTS.

P. 959, line 13.—For "rents" read "rates."

P. 959, lines 14 to 18.—Omit words from "in case" to "contained."

PRECEDENT XXVI.—CERTIFICATE OF MAYOR OR NOTARY.

P. 972, lines 13 to 16.—Omit words in brackets. The stat. 5 Geo. II., c. 7, is repealed by the Statute Law Revision Act, 1887.

PURCHASE DEEDS.

PRELIMINARY DISSERTATION.

Chapter I.—Introductory.

Sale of Personal Property.

P. 17, line 18.—The rule laid down in *Irons* v. *Smallpiece* as to the absolute necessity of delivery to pass property in a chattel was upheld by the Court of Appeal in *Cochrane* v. *Moore*, 25 Q. B. D. 57, disapproving of the dictum of *Cave*, J., in *Re Ridgway* that retention of a chattel by the grantor raises only a strong presumption that no immediate transfer of the property in the chattel is intended. Delivery of chattel.

P. 19, line 8.—After *Webb* v. *Smith*, add *Tancred* v. *Delagoa Bay, &c., Co.*, 23 Q. B. D. 239; and see *ante*, pp. 184, 185. Jud. Act, 1873, s. 25 (6).

P. 19, line 9.—After *Brice* v. *Bannister*, add *Western Wagon, &c., Co.* v. *West*, [1892] 1 Ch. 271. See also *Re Richards, Humber* v. *Richards*, 45 Ch. D. 589; and see *ante*, p. 184. Notice.

Modern Purchase Deeds.

P. 20, *ad fin.*—In the absence of a seal, the deed will be void, unless it is proved that it was actually sealed: *National Provincial Bank* v. *Jackson*, 33 Ch. D. 1, C. A.; *Re Balkis Consolidated Co.*, W. N. 1888, p. 3, 58 L. T. 300, 36 W. R. 392. Evidence of sealing.

P. 21, note (*n*).—Sect. 26 of the Common Law Procedure Act, 1854, is repealed by the Statute Law Revision Act, 1892. It is not generally necessary to prove by the attesting witness a deed for the validity of which attestation is not rendered necessary by statute: *Worthington* v. *Moore*, 64 L. T. 338. Attestation.

Chapter II.—Who may be Vendors and Purchasers.

Who may be Vendors.

Sales under Express Powers.

Confirmation of Sales Act.

P. 33, line 12.—As to applications under the Confirmation of Sales Act by trustees for the sanction to the sale of minerals apart from the surface, see *Re Hirst's Mortgage*, 45 Ch. D. 263; *Re Wadsworth's Trust*, W. N. 1890, 163, 63 L. T. 217.

Legal estate.

P. 37, line 8.—Where real estate is charged with debts and directed to be sold, the residuary legatees are entitled to the surplus after payment of the debts, and in such a case the executors have power to sell the real estate and to convey the legal estate therein: *Re Sankey*, *Sankey* v. *Clarke*, W. N. 1889, p. 79.

Sales under Statutory Powers.

Settled Land Acts.

Pp. 40 to 57.—As to sales by tenant for life of settled property under the Settled Land Acts, see *sub tit.* SETTLEMENTS, *post*.

Drainage Acts.

P. 57, note (*o*).—The statutes 10 & 11 Vict. c. 38, 13 & 14 Vict. c. 31, and 19 & 20 Vict. c. 29, are Drainage Acts; see also the Improvement of Land Act, 1864, 27 & 28 Vict. c. 114.

Sales by Corporations.

Lands Clauses Act, 1845, s. 127.

P. 65, line 20.—After *London & South Western Rail. Co.* v. *Gomm*, add *Ray* v. *Walker*, [1892] 2 Q. B. 88; see also *Re Thackwray & Young's Contract*, 40 Ch. D. 34.

Sales by Infants.

Ratification of contract.

P. 68, line 21.—After *Dickham* v. *Worrall*, add *Holmes* v. *Brierley*, W. N. 1888, p. 158, 36 W. R. 795, C. A. (promise

to marry). See further as to contracts by infants, *sub tit.* BONDS, *ante*, p. 72.

P. 69, line 17.—By virtue of s. 41 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), land to which an infant is only contingently entitled in fee is a "settled estate" within the meaning of the Settled Estates Act, 1877: *Re Sparrow's Settled Estate*, [1892] 1 Ch. 412. Infant tenant in fee.

P. 75, line 4.—After *Re Docwra, Docwra* v. *Faith*, add *Re Cunningham & Frayling*, [1891] 2 Ch. 567. See further *sub tit.* ACKNOWLEDGMENTS, *ante*, p. 27. Bare trustee.

Sales by Lunatics.

P. 76, line 28.—After *Essex* v. *Daniell*, add *Drew* v. *Nunn*, 4 Q. B. D. 661.

P. 76, *ad fin.*.—The statutes 16 & 17 Vict. c. 70, and 25 & 26 Vict. c. 86, are repealed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5.) As to the powers of sale, management and administration, conferred upon the Court over the property of a lunatic, see ss. 116 *et seq.* of that Act. See also the Lunacy Act, 1891 (54 & 55 Vict. c. 65), and the Rules in Lunacy, 1892 and 1893. Lunacy Act, 1890.

As to the jurisdiction of the Court to appoint a person to convey on behalf of a lunatic so found by inquisition, see *Re Watson*, 58 L. T. 509, C. A. As to sale of land for building purposes, see *Re Tomkins*, 60 L. T. 402, C. A.

P. 77, line 1.—For 19 & 20 Vict. c. 70, read 40 & 41 Vict. c. 18. *Erratum.*

Sales in Bankruptcy.

P. 77, line 29.—An undischarged bankrupt cannot, even before the intervention of the trustee in bankruptcy, convey real estate acquired after the bankruptcy, so as to give a good title to a *bonâ fide* purchaser for value as against the bankruptcy-trustee: *Re New Land Development Association & Gray*, [1892] 2 Ch. 138, C. A. Undischarged bankrupt.

Who may be Purchasers.

Purchasers under Statutory Powers.

Settled Land Acts.

Pp. 81 to 84.—As to purchases of land out of capital monies arising under the Settled Land Act, see *sub tit.* "Settlements," *post.*

Purchases by Corporations.

Statutory powers of acquiring land.

P. 85, line 11.—Powers of acquiring land have been from time to time conferred on municipal corporations and other public bodies by the following statutes for purposes therein specified:—

The Working Classes Dwellings Act, 1890 (53 & 54 Vict. c. 16).

The Museums and Gymnasiums Act, 1891 (54 & 55 Vict. c. 22).

The Ranges Act, 1891 (54 & 55 Vict. c. 54).

The Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29).

The Small Holdings Act, 1892 (55 & 56 Vict. c. 31).

The Military Lands Act, 1892 (55 & 56 Vict. c. 43).

The Public Libraries Act, 1892 (55 & 56 Vict. c. 53).

Infants as Purchasers.

Ratification of purchase.

P. 89, line 33.—Where an infant purchased land from a building society and for four and a half years, during which period he attained full age, paid monthly instalments of the purchase-money, he was held to have ratified his contract: *Whittingham* v. *Murdy*, 60 L. T. 956.

Married Women as Purchasers.

Testamentary appointment.

P. 90, line 10.—A testamentary appointment by a married woman under a general power does not make the appointed property liable in respect of contracts entered into by her on

the credit of her separate estate prior to the commencement of the Married Women's Property Act, 1882: *Re Roper, Roper* v. *Doncaster*, 39 Ch. D. 482.

P. 91, line 2.—After *Re Shakespear, Deakin* v. *Lakin*, add *Palliser* v. *Gurney*, 19 Q. B. D. 519, C. A.; *Stogdon* v. *Lee*, 1891, 1 Q. B. 661, C. A. Power to contract.

Purchases by Persons in Fiduciary Positions.

P. 96, note (*q*).—After *Hay's Case*, add and consider *Lister & Co.* v. *Stubbs*, 45 Ch. D. 1, C. A.; *Archer's Case*, [1892] 1 Ch. 322, C. A. Profit by agent.

P. 101, line 4.—After *Wright* v. *Vanderplank*, add *Re Postlethwaite, Postlethwaite* v. *Rickman*, 60 L. T. 514, 37 W. R. 200, C. A. Acquiescence.

P. 112, line 14.—As to sale by a mortgagee under his power of sale to company in which he is a shareholder, see *Farrar* v. *Farrar's Limited*, 40 Ch. D. 395, C. A. See further, *sub tit.* Mortgages, *ante*, p. 197. Sale to company by shareholder.

P. 113, line 20.—For 41 Geo. III., c. 100, read 41 Geo. III., c. 109. *Erratum.*

Chapter III.—Formal Parts of Purchase Deeds.

Parties.

P. 117, note (*aa*).—Sect. 20 of the Trustee Act, 1850, so far as it relates to lunatics, and the whole of the Lunacy Regulation Act, 1862, are repealed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5). Repeal.

Consideration.

P. 152, line 7.—The Stamp Act, 1870, is repealed by the Stamp Act, 1891 (54 & 55 Vict. c. 39). But by s. 5 of the later Act it is provided that all facts and circumstances affect- Statement of consideration.

ing duty are to be fully and truly set forth in the instrument under a penalty of £10.

Apportionment of consideration.

P. 155, line 22.—Where property is conveyed on sale in separate parts by different instruments the consideration may be apportioned: see Stamp Act, 1891, s. 58 (i.), re-enacting s. 74 (1) of the repealed Stamp Act, 1870.

Inadequate consideration.

P. 157, line 8.—The poverty and ignorance of the vendor of a reversion and the fact that he had no independent legal advice will throw on the purchaser the burden of proving that the terms of purchase were fair and reasonable: *Fry* v. *Lane*, 40 Ch. D. 312; see further as to unconscionable bargains, *sub tit.* MORTGAGES, *ante*, p. 169.

Vendor's lien.

P. 157, *ad fin.*.—Where land taken by a railway company is found to be unsaleable, the Court will enforce the vendor's lien by restraining the company from running trains and by continuing in possession of the land: *Allgood* v. *Merrybent and Darlington Rail. Co.*, 33 Ch. D. 571.

Authority to solicitor to receive purchase money.

P. 161, line 25.—A solicitor producing a deed containing a receipt must be acting for the purchaser, and there must be actual production of the deed: *Day* v. *Woolwich Equitable Building Society*, 40 Ch. D. 491.

P. 161, line 35.—Sect. 56 of the Conveyancing Act, 1881, has been extended so as to render lawful the receipt of money by a solicitor as agent for trustees, by the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 2.

PARCELS.

Evidence to explain deed.

P. 171, line 4.—After *Earl of Bradford* v. *Earl of Romney*, add *Williams* v. *Jones*, 36 W. R. 573.

"Appurtenances."

P. 174, line 18.—After *Maitland* v. *Mackinnon*, add *Thomas* v. *Owen*, 20 Q. B. D. 225, C. A.

Manor.

P. 175, line 3 *et seq.*.—The statement here made requires correction. In *Higgins* v. *Grant*, Cro. Eliz. 18, it was held that the grant of a manor will not pass an advowson appendant unless appurtenances are included in the grant. All that was decided in *Earl of Albemarle* v. *Rogers*, 2 Ves. 477, was

that a devise of "manors, lands, tenements and hereditaments" subject to a term for eleven years in trust to receive the rents, &c., entitled the person beneficially entitled to the rents during the term to the proceeds of a sale made during the term of the next presentation to an advowson. Whether the advowson was appendant or in gross did not appear. Advowsons are not mentioned among the particulars to be deemed to be included in the conveyance of a manor by virtue of sect. 6 (3) of the Conveyancing Act, 1881, set out Vol. V., p. 190.

Reservation of minerals.

P. 178, line 24.—After *Love* v. *Bell*, add *Earl of Jersey* v. *Neath Guardians*, 22 Q. B. D. 555.

P. 179, line 3.—After *Great Western Rail. Co.* v. *Bennett*, add *Midland Rail. Co.* v. *Robinson*, 15 App. Cas. 19.

Derogation from grant.

P. 182, line 3.—After *Dutton* v. *Taylor*, add *Birmingham, Dudley, &c., Banking Co.* v. *Ross*, 38 Ch. D. 295, C. A., where it was held that the rule that a grantor shall not derogate from his grant did not entitle a grantee of a house to claim an easement of light inconsistent with the intention to be implied from the circumstances existing at the time of the grant and known to the grantee.

Pp. 185 to 191.—Reference should be made to *Beddington* v. *Attlee*, 35 Ch. D. 317, being a decision as to what passes by the general words to be deemed to be implied in a conveyance of land having buildings upon it, by virtue of sect. 6 (2) of the Conveyancing Act, 1881, set out Vol. V. p. 189. See also *Re Peck and London School Board*, [1893] 2 Ch. 315.

Bed of river.

P. 193, line 16.—Where a conveyance described the land as bounded by a river, evidence of surrounding circumstances in relation to the property was admitted to rebut the presumption that the bed of the river *usque ad medium filum* was intended to pass: *Duke of Devonshire* v. *Pattinson*, 20 Q. B. D. 263.

Rights of riparian owner.

P. 193, line 22.—After *Att.-Gen.* v. *Earl of Lonsdale*, add *Withers* v. *Purchase*, 60 L. T. 819; *Belfast Rope Works Co.* v. *Boyd*, 21 L. R. Ir. 560, C. A.

Habendum.

Conveyance for rent-charge.

P. 209, line 35.—The Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 9, gives to tenants for life power to make grants in fee of settled lands for building purposes subject to a reservation of a perpetual rent-charge; see *sub tit.* Settlements, *post*, p. 322.

Covenants.

Warranty of title.

P. 215, line 16.—As to the implication of warranty of title in a conveyance independently of any covenants for title, express or imported by statute, see the observations in the judgment of the Lords Justices, *Ex parte Stanford, Re Barber*, 17 Q. B. D. 259, C. A., at pp. 271, 272 (bill of sale case).

Restrictive words in statutory covenants for title.

P. 237, line 2.—The restrictive words "otherwise than by purchase for value" in s. 7 (1, A) of the Conveyancing Act, 1881 (set out Vol. V., p. 218) do not protect a vendor who has during his possession granted a lease, and afterwards accepted a surrender thereof, from liability under his implied covenant by conveying "as beneficial owner" in respect of underleases created by the lessee between the lease and the surrender: *David* v. *Sabin*, [1893] 1 Ch. 523, C. A.

Covenant for quiet enjoyment.

P. 241, line 3.—Where a testator gave the income of a fund to his son, directing that so long as the son should reside with his mother, a sum of £50 per annum should be deducted from the income and paid to her; the son, while living apart from his mother, "as beneficial owner" assigned his interest for valuable consideration; he afterwards returned to reside with his mother; it was held by *Lindley* and *Lopes*, L.JJ. (diss. *Kay*, L.J.), that the implied covenant for quiet enjoyment did not have the effect of enlarging the defeasible interest of the assignor into an indefeasible interest, or impose on him an obligation not to return to reside with his mother: *Re Greenwood, Priestley* v. *Griffiths*, W. N. 1892, p. 20, 66 L. T. 101, 40 W. R. 357, C. A. See as to breach of

covenants for quiet enjoyment in leases, *sub tit.* LEASES, Vol. III., pp. 212 *et seq.*, and *ante*, p. 148.

P. 243, note (z).—*Stanley* v. *Hayes* was approved in *Kelly* v. *Rogers*, [1892] 1 Q. B. 910, C. A., where it was held that re-entry by a superior landlord for breach of covenant by his lessee did not render the lessee liable for breach of covenant for quiet enjoyment in an underlease granted by him.

Covenant against incumbrances.

P. 243, line 13.—Liability to paving expenses under the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), is not an "incumbrance" within the covenant against incumbrances implied by virtue of s. 7 of the Conveyancing Act, 1881: *Egg* v. *Blayney*, 21 Q. B. D. 107.

Covenant for further assurance.

P. 248, *ad fin.*—*Bankes* v. *Small* was affirmed, 36 Ch. D. 716, C. A.

Covenants for production of deeds.

P. 254, line 19.—As to the right of a mortgagor, where the mortgage was made since the commencement of the Conveyancing Act, 1881, to inspect title deeds, see s. 16 of that Act set out *sub tit.* MORTGAGES, Vol. III., p. 900.

Notice.

P. 292, line 8.—A mere occupier of a property, with notice of a restrictive covenant affecting it, is bound, within the principle of *Tulk* v. *Moxhay*: *Mander* v. *Falcke*, 1891, 2 Ch. 554, C. A. See also as to notice, *ante*, pp. 149, 150.

Perpetuity.

P. 294, line 7.—In *Mackenzie* v. *Childers*, 43 Ch. D. 265, *Kay*, J., held that a restrictive covenant is not within the rule against perpetuities.

Constructive notice.

P. 300, line 12.—For further recent cases as to constructive notice as affecting leases and assignments thereof, see *ante*, *sub tit.* LEASES, p. 140.

Intention of parties.

P. 302, line 18.—In addition to the case of *Nottingham Patent Brick & Tile Co.* v. *Butler*, 16 Q. B. D. 778, C. A., the principle laid down in *Renals* v. *Cowlishaw* to the effect that, in the case of a building scheme, the benefit of a restrictive covenant, if such appears to have been the intention of the parties, runs with the land, has since been applied in the following cases: *Collins* v. *Castle*, 36 Ch. D. 243; *Sheppard* v. *Gilmore* (No. 1), 57 L. T. 614, 57 L. J. Ch. 6; *Spicer* v. *Martin*, 14 App. Cas. 12; *Mackenzie* v. *Childers*, 43 Ch. D. 265; *Re Birmingham and District Land Co.*

and Allday, 1893, 1 Ch. 342. See also *King* v. *Dickeson*, 40 Ch. D. 596.

Who may sue.

P. 303, line 15.—The decision of the Court of Appeal in *Martin* v. *Spicer* was affirmed by the House of Lords in *Spicer* v. *Martin*, 14 App. Cas. 12.

Meaning of assigns.

P. 303, line 20.—Where the covenant upon the sale of part of an estate in lots was not to build without the consent of D., "his heirs or assigns," it was held that so long as D. remained owner of a substantial portion of the unsold part, D.'s consent alone was necessary: *Everett* v. *Remington*, [1892] 3 Ch. 148.

Right to sue lost by acquiescence.

P. 304, line 27.—After *Kelsey* v. *Dodd*, add *Duke of Northumberland* v. *Bowman*, 56 L. T. 773, where the delay was of fourteen months.

Restrictive covenants in leases.

P. 306, *ad fin.*—In *Tod-Heatley* v. *Benham*, 40 Ch. D. 80, the Court of Appeal doubted whether the term "nuisance" in a restrictive covenant should be limited (as it apparently was in *Harrison* v. *Good*) to what would be an actionable nuisance without such covenant. See further as to restrictive covenants in leases, *ante*, *sub tit.* LEASES, p. 147.

Measure of damages.

P. 311, line 10.—After *Bain* v. *Fothergill*, add *Gas Light and Coke Co.* v. *Towse*, 35 Ch. D. 519; *Rowe* v. *London School Board*, 36 Ch. D. 619.

CHAPTER IV.—SALES OF COPYHOLDS.

Mortmain Act.

P. 317, *ad fin.*—The stat. 9 Geo. II., c. 36, is repealed. Copyholds are also within the provisions of the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), see s. 10 (iii.) of that Act.

Admittance of committees of lunatics.

P. 326, *ad fin.*—The stat. 16 & 17 Vict. c. 70, is repealed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5). Provision is made for the admittance of committees of lunatics by s. 125 of the later Act.

Steward's fees.

P. 341, line 27.—See now as to the right of the steward to

insist on payment of his fees, s. 68 of the Stamp Act, 1891 (54 & 55 Vict. c. 39).

Chapter V.—Conveyances on Sale of Personal Property.

Bills of sale.

Pp. 356 to 363.—As to the recent decisions affecting the law with regard to bills of sale, see *sub tit.* Mortgages, *ante*, pp. 172 *et seq.*

Goodwill

Pp. 365, 366.—The assignment of the goodwill of a solicitor's business does not, apart from express stipulation, pass the right to the custody of his client's papers: *James* v. *James*, 60 L. T. 569, 37 W. R. 495. Where a vendor of a business agreed in writing to "render" all his customers to the purchaser it was held that the vendor could not by soliciting or supplying his old customers derogate from his own grant, and an injunction was granted against his so doing, *Davis* v. *Smaggasgale*, W. N. 1890, p. 169, C. A. For other recent decisions affecting the law as to goodwill, see *ante*, *sub tit.* Partnerships, *ante*, pp. 257, 258.

Chapter VI.—Stamps.

Stamps.

Pp. 369 to 376.—See *post*, *sub tit.* Stamps, pp. 344 *et seq.*

PRECEDENTS.

Precedent IX.—Assignment of Leaseholds.

Erratum.

P. 391, line 7.—After the words "term of —— years," insert "from the —— day of ——, 18—."

Precedent XXVII.—Conveyance under Settled Land Act, 1882.

Sale of principal mansion-house.

P. 432, note (*c*).—Sect. 15 of the Settled Land Act, 1882, is repealed by s. 10 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69), but virtually re-enacted by the same section so far as to render unnecessary any alteration in this Precedent or the notes thereto.

Precedent XXXVII.—Conveyance of Equity of Redemption.

Stamp.

P. 461, note (*k*).—Sect. 73 of the Stamp Act, 1870, is now replaced by s. 57 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), which is identical. It would seem that in calculating the Stamp Duty payable on the sale of an equity of redemption, any arrears of interest should be taken into account as forming part of the consideration within the meaning of this section. Where interest has been paid up to the last date upon which it was due, so that although accruing from day to day none is actually due, it would seem that current interest is within the meaning of the section, and forms part of the sum on which *ad valorem* duty should be paid. See Alpe on Stamps (1891), p. 104.

Indemnity.

P. 462, note (*m*).—After *Waring* v. *Ward*, add *Bridgman* v. *Daw*, 40 W. R. 253.

Precedent LII.—Conveyance of Freeholds to a Railway Company.

Compensation.

P. 500, note (*o*).—After *Fleming* v. *Newport Rail. Co.*, add *Wigram* v. *Fryer*, 36 Ch. D. 87; *Cowper Essex* v. *Local Board for Acton*, 14 App. Cas. 153; *Re London, Tilbury, &c. Rail. Co. and Trustees of, &c., Schools*, 24 Q. B. D. 326, C. A.; *Lowther* v. *Caledonian Rail. Co.*, [1892] 1 Ch. 73, C. A.; *Belton* v. *London County Council*, 68 L. T. 411. In the case of unopened mines a tenant for life has no

right to an apportioned part of the compensation money paid in respect of minerals taken by a railway company: *Re Robinson's Settlement Trusts*, [1891] 3 Ch. 129.

Stamp.

In calculating the stamp duty on a conveyance of land under the Lands Clauses Acts, the amount of compensation for loss of business must be treated as part of the consideration for the sale: *Commissioners of Inland Revenue* v. *Glasgow and South Western Rail. Co.*, 12 App. Cas. 315, Sc.

Precedent LVII.—Conveyance of Copyholds to a Railway Company.

Enfranchisement.

P. 515, note (*e*).—As to the measure of compensation in the case of enfranchised copyholds compulsorily taken under the Lands Clauses Act, see *ante*, *sub tit.* Enfranchisement, p. 131.

Precedent LXIV.—Conveyance of Manor.

Parcels.

P. 529, line 29.—If any advowsons appurtenant to the manor are intended to pass, add, after the words "coloured pink," the words "with the appurtenances," see *ante*, p. 290.

Precedent LXVIII.—Grant of Right of Way.

Alteration of right of way.

P. 547, note (*x*).—Where the grantor has once defined the course of a way over which right is given, he cannot alter it without the grantee's consent: *Desson* v. *South Western Rail. Co.*, W. N. 1889, p. 79, 61 L. T. 377.

Precedent LXIX.—Grant of Watercourse.

Pollution of watercourse.

P. 552, note (*z*).—As to the rights of a riparian owner to prevent the pollution of a stream, see *Blair* v. *Deakin*, W. N.

1887, p. 148, 57 L. T. 522; *Clarke* v. *Somersetshire Drainage Commissioners*, 59 L. T. 670, 36 W. R. 890, 57 L. J. M. C. 96.

Precedent XCI.—Assignment of Leasehold Lot.

Powers of distress whether within Bills of Sale Acts.

P. 636, note (*o*).—The decision in *Hall* v. *Comfort* was disapproved of by the Court of Appeal in *Re Willis, Ex parte Kennedy*, 21 Q. B. D. 384. As to whether attornment clauses are within the Bills of Sale Acts, see *ante, sub tit.* Mortgages, p. 207.

P. 637, same note.—After *Reeves* v. *Barlow*, add *Morris* v. *Delobbel Flippo*, [1892] 2 Ch. 352. And see *ante*, pp. 173, 174.

Precedent XCII.—Assignment of Leaseholds to Purchaser of Largest Lot.

Power of re-entry.

P. 640, note (*t*).—The law established by *Hodgkinson* v. *Crowe* has not been altered by the Conveyancing Act, 1881, see *ante, sub tit.* Leases, p. 141.

Precedent XCV.—Conveyance of Glebe Lands.

Sale of glebe under the Glebe Lands Act, 1888.

P. 650, note (*d*).—Greater facilities for the sale of glebe land are now given by the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20). By s. 11 it is enacted as follows:—

Saving for Ecclesiastical Leasing Act, 21 & 22 Vict. c. 57.

Sect. 11. "Such notice to the bishop of the diocese as may be prescribed for the purposes of this Act shall be substituted for the period of three months' notice, which in pursuance of s. 1 of the Ecclesiastical Leasing Act, 1858, is required to be given to the bishop of the diocese on every proposed sale of glebe lands under the provisions of that Act, but, save as aforesaid, nothing in this Act shall limit or prejudice the powers and provisions contained in the Ecclesiastical Leasing Acts or in the Acts administered by the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy."

As to the requisite notices to be given prior to sale, and for other directions, see the Rules and Forms (dated August, 1892) made by the Board of Agriculture and approved by the Lord Chancellor.

The Precedent in the text may easily be adapted to the cases of a conveyance of glebe lands under the Act of 1888.

Precedent XCIX.—Grant of Tithe Rent Charge.

P. 658, note (*o*).—The stat. 6 & 7 Will. IV. c. 71, is amended by the Tithe Act, 1891 (54 Vict. c. 8), but none of the sections of the earlier Act here cited are repealed, or appear to be affected by the amending Act. Tithe Act, 1891.

Precedent CI.—Assignment of Goodwill, &c., of Business.

P. 667, note (*e*).—After *Levy* v. *Walker*, add *Chatteris* v. *Isaacson*, 57 L. T. 177; see also *ante*, pp. 257, 258. Trade name.

REGISTRY.

PRELIMINARY DISSERTATION.

Registration of title.

P. 1, note (*a*).—No change in the law has taken place since Vol. VI. was published, with regard to registration of title to land generally, so far as England is concerned. But by the Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), local registries of title to land in Ireland have been established in that part of the United Kingdom. Such registration is made compulsory in the case of lands purchased under the Land Purchase Acts; but any other lands may be voluntarily registered under this Act, and, if so registered, are exempted from the operation of the earlier Acts as to registration of deeds, &c., relating to land in Ireland.

Middlesex Registry.

Stat. 54 & 55 Vict. c. 64.

Pp. 2 to 9.—The Lands Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64), s. 7, repeals the Acts mentioned in the second Schedule as from the commencement of the Act [*i.e.*, the 1st April, 1892], to the extent mentioned in that Schedule.

Repeals.

The Acts repealed are as follow:—

7 Anne, c. 20, s. 2, from "in manner following" to end of the section; also ss. 3 to 7, 11 to 14, 16, 19, 20, and 22.

25 Geo. II. c. 4, the whole Act.

7 Will. IV. & 1 Vict. c. 30, s. 28.

5 & 6 Vict. c. 103, s. 34.

22 & 23 Vict. c. 21, s. 7.

The registration of deeds, wills, and other instruments in Middlesex is now mainly regulated by the unrepealed sections of the Middlesex Registry Act, 1708 (7 Anne, c. 20), and by the Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64), and the Rules made under the later Act.

A provisional Act, intituled the Middlesex Registry Act, 1891 (54 Vict. c. 10), had been passed earlier in the Session providing for the transfer of the business of the Middlesex Registry to the Office of the Land Registry, but fuller provisions for effecting this purpose are contained in the later Act of the same year. Stat. 54 Vict. c. 10.

By the stat. 54 & 55 Vict. c. 64, it is enacted as follows:—

1. The Middlesex Registry shall be transferred to the Land Registry established under the Land Transfer Act, 1875, and shall form part of that office and be conducted by the Registrar of that office accordingly, and all powers and indemnities subsisting and all penalties imposed for the purposes of the Land Transfer Act, 1875, shall be available for the purposes of the Middlesex Registry Act, 1708, and the Middlesex Registry Act, 1891. Transfer of Middlesex Registry to Land Registry. 38 & 39 Vict. c. 87. 7 Anne, c. 20. 54 & 55 Vict. c. 10.

2.—(1.) Subject to any rules made under this section, the regulations in the First Schedule to this Act shall be observed in the Middlesex Registry. Rules.

(2.) The provisions as to making rules contained in sections one hundred and eleven and one hundred and twelve of the Land Transfer Act, 1875 (except so much of those provisions as requires regard to be had to the value of any land or charge in fixing fees), shall extend to the making of rules for the purposes of the Middlesex Registry Act, 1708: Provided that the charges of solicitors which are regulated under the Solicitors Remuneration Act, 1881, shall not be altered by any rule made under this section. 7 Anne, c. 20.

(3.) The Middlesex Registry Act, 1708, shall be construed as if the directions contained in any such rules and regulations were embodied in that Act.

Sect. 3 provides for the transfer of buildings, &c., of the Middlesex Registry; and s. 4 contains provisions as to the existing officers of that registry.

By sects. 5 and 6 it is enacted as follows:—

5. Except on the application of the mortgagee named in the mortgage, his executors or administrators, it shall not be necessary for the registrar to note on the register the discharge of a mortgage in any other manner than by registering a memorial of the instrument of discharge. Discharges of mortgages.

6. It shall not be necessary for the validity of any judgment, statute, or recognizance, that a memorial thereof be registered under the Middlesex Registry Act, 1708. Memorials as to judgments, &c., not to be registered.

The First Schedule to the Act of 1891 is as follows:—

(1.) Every memorial to be registered shall be put into writing

on paper of a size and quality to be prescribed by the registrar and brought to the registry.

(2.) In case of deeds and conveyances, the memorial shall be under the hand and seal of some or one of the grantors, or some or one of the grantees, his or their heirs, executors, or administrators, guardians, or trustees, attested by one witness, such witness where practicable to be a witness to the execution of such deed or conveyance; which witness shall upon his oath prove the signing and sealing of such memorial, and, where such witness is a witness to the deed or conveyance, the execution of the deed or conveyance mentioned in such memorial.

(3.) In case of wills the memorial shall be under the hand and seal of some or one of the devisees, his or their heirs, executors, or administrators, guardians or trustees, attested by one witness who shall upon his oath prove the signing and sealing of such memorial.

(4.) A certificate of such oath shall be endorsed on the memorial and shall be signed by the person before whom the oath has been taken.

(5.) Every memorial of any deed, conveyance, or will shall contain the day of the month and the year when such deed, conveyance, or will bears date, and the names and additions of all the parties to such deed or conveyance, and of the devisor or testatrix of such will, and of all the witnesses to such deed, conveyance, or will, and where practicable the places of their abode, and shall express or mention the lands and hereditaments contained in such deed, conveyance, or will, and the names of all the parishes within the county where any such lands or hereditaments are lying and being that are given, granted, conveyed, devised, or any way affected or charged by any such deed, conveyance, or will, in such manner as the same are expressed or mentioned in such deed, conveyance, or will, or to the same effect.

(6.) Every such deed, conveyance, and will, or probate of the same, of which such memorial is so to be registered as aforesaid, shall be produced to an officer of the registry at the time of registering such memorial.

(7.) A certificate shall be endorsed by an officer of the registry on every such deed, conveyance, and will, or probate thereof, and shall mention the day on which such memorial is so registered, and shall also express in what book and under what number the same is registered, and the said certificate shall be signed by an officer of the registry, which certificate shall be taken and allowed as evidence of such respective registries in all courts of record whatsoever.

(8.) Every memorial shall be numbered, and the day of the month and the year when every memorial is registered shall be entered in the margin thereof, and the registrar shall duly file

every such memorial, in order of time, as the same shall be brought to the registry, and register the said memorials in the same order that they shall respectively come to his hands.

(9.) Where there are more writings than one for making and perfecting any conveyance or security which name, mention, or anyways affect or concern the same lands or hereditaments, it shall be a sufficient memorial and register thereof if all the said lands and hereditaments, and the parishes wherein the same lie, be only once named or mentioned in the memorial or register of any one of the deeds or writings made for the perfecting of such conveyance or security, and that the dates of the rest of the said deeds or writings relating to the said conveyance or security, with the names and additions of the parties and witnesses, and the places of their abodes, be only set down in the memorials and registers of the same, with a reference to the deed or writing whereof the memorial is so registered that contains or expresses the parcels mentioned in all the said deeds, and directions how to find the registering the same.

(10.) The filing of a memorial shall be the registration thereof required by the Middlesex Registry Act, 1708, and the registers shall consist of the filed memorials arranged or bound in volumes conveniently for reference.

(11.) Any person may search any register or index kept in the Land Registry in pursuance of this Act. The registrar as often as required, shall make searches concerning all memorials in the registry, and give certificates concerning the same if required.

(12.) Indexes shall be kept in such manner, and shall contain such particulars as to grantors, land affected, and otherwise, as the registrar may direct.

(13.) The registrar may form a consolidated index from the Lexicographical Index to cover such period as he may think advisable, and such index, when made, shall be in substitution for the indexes subsisting at the commencement of this Act for the period covered by such consolidated index.

(14.) Any person deriving title under an instrument (capable of registration under the Acts relating to the Middlesex Registry) which confers on him the right to apply for registration with a possessory title, of the land comprised in it under the Land Transfer Act, 1875, may, at his option, either register a memorial of an instrument under the Acts relating to the Middlesex Registry, or apply for registration with possessory title under the Land Transfer Act, 1875. Such registration shall, when completed, bear the same date as the application, and render unnecessary the registration of the instrument under the Acts relating to the Middlesex Registry.

No fee shall be paid on such application other than the fee for the registration under the Land Transfer Act, 1875, and, if the application is made by a purchaser, no declaration as to possession shall be required.

In the event of an absolute title being afterwards applied for and obtained, allowance shall be made for the fees payable on the registration with possessory title.

(15.) The exercise by the registrar of his powers under this schedule shall be subject to the approval of the Lord Chancellor.

Rules of 1892.

Under the Land Registry (Middlesex Deeds) Registry Act, 1891, certain Rules were issued, dated the 8th February, 1892, which are now in force. These Rules contain regulations as to memorials, indexes, searches, registration under the Land Transfer Act, 1875, the furnishing of office copies of documents in the office, and ancillary matters. These Rules may be cited as the Land Registry (Middlesex Deeds) Rules, 1892; they came into operation on the 1st April, 1892, and are in substitution for all rules relating to the Middlesex Registry previously subsisting.

The attention of legal practitioners is particularly directed to the following Rules:—

2. Memorials, and certificates of satisfaction of mortgages, shall be written or printed on the best white loan paper, 16 inches long by 10 inches wide, with an inner margin 2 inches wide, and an outer margin $\frac{3}{4}$ of an inch wide, and shall be left at the office by hand, and shall bear Land Registry Stamps for the amount of the fees, and shall be accompanied by the original instruments and mortgages respectively.

3. The particulars required by paragraph 5 of the First Schedule of the Act of 1891 to be inserted in memorials, shall only be required in so far as the same appear from the original instrument, except that the address and description of the witness to the memorial shall in all cases be inserted therein.

4. Where the original instrument contains a plan, a copy thereof (or of so much thereof as is referred to in the memorial) shall be drawn on the memorial, unless owing to its size this cannot be done; in which case a tracing on linen, signed by the person signing the memorial and by the witness, shall be left with the memorial and filed in the office. No other copy shall be required.

5. It shall no longer be necessary to seal any memorial, or to verify by oath the signing thereof or the execution of the instrument to which it refers; but the signing of the certificate of satisfaction of a mortgage shall continue to be verified by oath as heretofore.

6. The witness to the memorial shall be a witness or one of the witnesses (if any) to the original instrument unless at the date of the memorial every such witness is dead or absent from the United Kingdom or cannot be found, or some other sufficient

cause exists to prevent it. In such cases a statutory declaration shall be furnished, and left with the memorial at the registry, stating the reason why the witness to the memorial is not one of the witnesses to the instrument.

7. Every memorial shall be compared by an officer of the registry with the instrument to which it relates; and any clerical, trifling, or obvious errors may be corrected by him. But if any error is found which appears to the officer unsuitable for such correction, its nature shall be notified to the person who has left the memorial in the office, and (unless he satisfies the registrar that it is sufficient) the memorial may be returned and the registration be cancelled, the fee paid being retained, but no fee charged on a substituted memorial.

18. The forms in the schedule hereto, with such variations as circumstances may require, shall be used in all cases to which they refer.

Annexed, &c., deeds and recitals.

The following Regulation, dated 19th April, 1892, was issued by the Registrar:—

"The following instruction shall be substituted for the note to Form 1 of the Land Registry (Middlesex Deeds) Rules, 1892 (Memorial of a deed) relating to descriptions of land in endorsed, annexed and supplemental deeds and recitals:—

"Where the description of land in an endorsed or annexed deed is made by reference to that contained in the prior deed, or (in any case) to a recital, the description contained in such prior deed or recital shall also be set out in the memorial.

"Except that in the case of an annexed or endorsed deed, where a memorial of the prior deed has been registered, a reference to the year book and number of its registration shall be sufficient, without setting out the full description contained in such deed."

Yorkshire Registries.

Registration not notice.

Pp. 9 to 14 [see also **P. 17**, lines 4 to 11].—Although by reason of the repeal of s. 15 of the Yorkshire Registries Act, 1884, the rule of law that registration is not of itself notice is, strictly speaking, restored, yet, having regard to the provisions of ss. 14 and 16 of the Act to the effect that assurances are to have priority in order of registration and protection by legal estate and tacking are disallowed, the rule (stated at **P. 17**) that "a purchaser or mortgagee who obtains the legal estate is not affected by a prior equitable registered

incumbrance of which he had no notice *aliunde*," has no longer any application to Yorkshire.

Rules of 1885.

Rules under the above Act were issued by the Justices of the North Riding in Quarter Sessions assembled, and came into operation on the 1st January, 1885. These Rules were published in the *London Gazette* of the 9th January, 1885, pp. 130 to 152. Similar Rules were issued by the Justices of the East and West Ridings respectively, dated the 24th December, 1884, which were not published in the *Gazette*; a note, however, was inserted in the *Gazette* at the foot of the North Riding Rules stating that the terms of the Rules for each Riding are identical.

Attention is called to the following Rules:—

Forms.

6. The forms in the Schedule hereto shall be used in all matters to which they refer, or are capable of being applied or adapted, with such alterations and additions as are necessary to meet the circumstances of each case.

Copies of the said forms printed on official paper and issued under the sanction of the county authority, shall be deemed to be accurate copies of the said forms, and to be on paper of the size and quality prescribed by these rules in respect of documents to be presented to the registrar for enrolment.

No accidental error, omission, variance, or misdescription of the residences and occupations of any party to or person named in any memorial, affidavit, or other document to be enrolled or registered in the registry in any point not necessary for the identification of any such party or person, shall prejudicially affect or make void the enrolment or registration thereof.

Description of residence of body corporate.

7. Where in any case it is required under the Act or these Rules that a description of the residence of any body corporate should be set forth in any document, it shall be sufficient if the address of the registered office, or if there be no registered office, if the address of any office of such body corporate, be inserted therein, and for all or any of the purposes of Rules 11 and 15, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or *curator bonis*.

Copies of maps and plans to be furnished.

9. Where any map or plan is endorsed upon or annexed to any instrument that may be required to be registered, an exact copy of such map or plan shall be drawn upon the copy or memorial of such instrument which is presented for actual enrolment in the register, or drawn upon linen cloth and attached thereto.

Sending of deeds, &c., by post.

23. Any document requiring to be sent to the Registry Office may be sent thereto in a prepaid cover by post.

Generally.

Pp. 15 to 19.—It has been held that a contract for the sale of land is not an "assurance" capable of being registered within the meaning of the Yorkshire Registries Act, 1884: *Rodger* v. *Harrison*, [1893] 1 Q. B. 161, C. A. And it would seem that the principle of the decision must apply with equal force to the Middlesex Acts where the term used is "conveyance." Contract for sale of land.

By the stat. 16 & 17 Vict. c. 56, s. 6, it is provided that deeds, &c., to which the Commissioners of Woods and Forests, or the Commissioners of Works are parties, or which may in any manner affect or relate to Crown lands, shall, when enrolled in the Office of Land Revenue Records and Enrolments, be as valid as if registered in a County Registry Office. It appears to be the usual practice in Middlesex to register assignments of Crown Leases as well as to enrol them at the Office of Land Revenue, &c.; but, having regard to the terms of the Act, such registration does not appear to be necessary. Crown lands.

PRECEDENTS.

Pp. 20 to 25.—All the Precedents given in these pages are rendered obsolete by the Rules issued by the several Offices of Land Registry, whereby a strict adherence is required to the Forms appended to the respective Rules. See as to Middlesex, *ante*, p. 304; and as to Yorkshire, *ante*, p. 306.

Forms for use in the Middlesex Registry may be obtained at the Office, No. 34, Lincoln's Inn Fields, London. Forms for use in the Yorkshire Registries may be obtained either at the Offices of the several Ridings, or from Messrs. Waterlow Brothers & Layton, 24, Birchin Lane, London.

RELEASES.

PRELIMINARY DISSERTATION.

Release of debt.

P. 28, note (*a*).—After *Eden* v. *Smyth*, add *Re Applebee*, *Leveson* v. *Beales*, [1891] 3 Ch. 422.

Restraint on anticipation.

P. 30, note (*d*).—*Re Bown*, *O'Halloran* v. *King*, is now reported 27 Ch. D. 411.

Covenant not to sue one of two joint tort-feasors.

P. 35, line 30.—The rule that a covenant not to sue one of two joint debtors does not operate as a release to the other joint debtor has been held to apply to the case of joint tort-feasors: see *Duck* v. *Mayeu*, [1892] 2 Q. B. 511, C. A., where the distinction between a covenant not to sue and a release is explained.

Novation of debt.

Novation of debt operates as a complete release and cannot be construed as a mere covenant not to sue: *Commercial Bank of Tasmania* v. *Jones*, [1893] A. C. 313, P. C.

PRECEDENTS.

PRECEDENT VII.—RELEASE OF POWERS.

Power coupled with duty.

P. 58, note (*m*).—After *Re Eyre*, add *Re Little*, *Harrison* v. *Harrison*, 40 Ch. D. 418, C. A. See further, as to the effect of s. 52 of the Conveyancing Act, 1881, *Re Radcliffe*, *Radcliffe* v. *Bewes*, [1892] 1 Ch. 227, C. A. stated *ante*, p. 50.

SEPARATION DEEDS.

PRELIMINARY DISSERTATION.

Testamentary gifts favouring separation.

P. 95, line 28.—A gift by will to a married woman of a weekly sum for her maintenance while living apart from her husband was held to be wholly void in *Re Moore, Trafford* v. *Maconochie*, 39 Ch. D. 116, C. A. where the distinction between gifts on condition and gifts by way of limitation is discussed, and the case is distinguished on that ground from *Wren* v. *Bradley*, and *Brown* v. *Peck*.

Erratum.

P. 101, *ad fin.*—For *Migan* v. *Peek*, read *Mizen* v. *Pick*.

Condonation of past offences.

P. 107, line 16.—Where a wife was separated from her husband under a deed containing a stipulation that "No proceedings shall be commenced or prosecuted by or on behalf of either party against the other in respect of any cause of complaint which now exists or has arisen before the date of these presents," and afterwards presented a petition for a judicial separation on the ground of her husband's adultery subsequent to the deed, it was held that the stipulation was not equivalent to condonation, and that the husband was not thereby precluded from pleading in answer to the petition adultery committed by the wife before the date of the deed: *Gooch* v. *Gooch*, [1893] P. 99. The latter portion of Clause 4 of Precedent II. is intended to meet such a case. As to the power of the Court to sever a proviso which renders a separation deed void if proceedings are taken for any past *or future* acts of adultery, see *Brunton* v. *Dixon*, W. N. 1892, p. 105.

Power of Court to vary marriage settlements.

P. 108, line 18.—After *Clifford* v. *Clifford*, add *De Ricci* v. *De Ricci*, [1891] P. 378, where the parties had entered into a marriage contract under the French law.

Custody of children.

P. 112, line 11.—As to the powers of the Court with regard to the custody of children, see the Custody of Children Act, 1891 (54 Vict. c. 3).

SETTLEMENTS.

PRELIMINARY DISSERTATION.

Chapter II.—Who may Make Settlements.

Settlements by Married Women.

Form of judgment against married woman.

P. 134, note (*h*).—The form of judgment given in *Scott* v. *Morley*, was adopted in *Galmoye* v. *Cowan*, 58 L. J. Ch. 769; *Holtby* v. *Hodgson*, 24 Q. B. D. 143, C. A.; and in *Pelton* v. *Harrison*, [1892] 1 Q. B. 118, C. A. See further *Cox* v. *Bennett*, [1891] 1 Ch. 617, C. A.

Policy of life assurance.

P. 138, note (*u*).—In *Re Davies' Policy Trusts*, [1892] 1 Ch. 90, *Chitty*, J., followed the decision of *North*, J., in *Re Seyton, Seyton* v. *Satterthwaite*.

Liability of husband for wife's antenuptial debts.

P. 139, line 11.—An unsatisfied judgment obtained against a wife in respect of her separate estate for an antenuptial debt is no bar to an action against the husband; but the husband may in such action plead the Statute of Limitations so as to free him from liability for antenuptial debts of his wife accrued due more than six years before the commencement of the action: *Beck* v. *Pierce*, 23 Q. B. D. 316, C. A.

M. W. P. Act, 1882, s. 19.

P. 141, note (*c*).—A settlement of the property of an infant wife under the Infants Settlement Act, 1855 (18 & 19 Vict. c. 43), though post-nuptial, was held, by virtue of s. 19 of the Married Women's Property Act, 1882, to be valid as against a creditor who had obtained judgment in respect of a debt incurred after the marriage, but before the date of the settlement: *Hemingway* v. *Braithwaite*, 61 L. T. 224.

P. 142, note (*d*).—Where a settlement was made on the marriage of a woman, who was then an infant, and she after attaining full age repudiated the settlement; *Chitty*, J., held, on the authority of *Hancock* v. *Hancock*, that as the settlement was binding on the husband, it was a "settlement

respecting the property" of the wife within the meaning of s. 19 of the Married Women's Property Act, 1882, so as to exclude the operation of s. 2 of the Act: *Stevens* v. *Trevor-Garrick*, [1893] 2 Ch. 307.

P. 143, note (*e*).—After *Small* v. *Hedgely*, add *Axford* v. *Reid*, 22 Q. B. D. 548, C. A.

Disability of Infancy.

Repudiation of settlement.

P. 149, line 6.—A settlement made in infancy must be repudiated within a reasonable time after the attainment of full age, or it will become absolutely binding: *Carter* v. *Silber*, [1892] 2 Ch. 278, C. A. As to what is a "reasonable time" see *Re Jones, Farrington* v. *Forrester*, [1893] 2 Ch. 461.

Confirmation of settlement.

P. 149, line 30.—The confirmation of a settlement made in infancy relates back to the date of the settlement with reference to the rule against perpetuities: *Cooke* v. *Cooke*, 38 Ch. D. 202.

Infant's Relief Act, 1874.

P. 149, note (*k*).—The correctness of the view taken in this note has been judicially affirmed: see *Duncan* v. *Dixon*, 44 Ch. D. 211.

Infants' Settlement Act, 1855.

P. 154, line 14.—The Court will, in a proper case, direct the insertion, in a settlement under the Act, of a covenant to settle after-acquired property which will bind the infant: *Re Johnson, Moore* v. *Johnson*, [1891] 3 Ch. 48.

Chapter III.—Considerations and Voluntary Settlements.

Consideration for Settlement.

P. 168, line 23.—The rule here stated and recently affirmed in *Godfrey* v. *Poole*, 13 App. Cas. 497, P. C. is now abrogated.

Voluntary Conveyances Act, 1893.

By the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), voluntary conveyances, if in fact made *bonâ fide*, and whether made before or after the passing of the Act, are no longer to be deemed fraudulent and covinous within the meaning of the stat. 27 Eliz. c. 4, by reason of any subsequent purchase for value.

Leaseholds

P. 169, *ad fin.*—After *Ex parte Doble*, add *Harris* v. *Tubb*, 42 Ch. D. 79.

Limits of marriage consideration.

P. 172, *ad fin.*—After *Newstead* v. *Searles*, add *De Mestre*

v. *West*, [1891] A. C. 264, where most of the cases cited in the text as to the limits of the marriage consideration are discussed, and the decision in *Clarke* v. *Wright*, is disapproved of.

The Bankruptcy Acts.

Application of Acts to compositions.

P. 181, line 22.—For "s. 18, sub-s. 13" of the Bankruptcy Act, 1883 (which section is now repealed), read "s. 3, sub-s. 17 of the Bankruptcy Act, 1890."

Valuable consideration.

P. 185, line 16.—Where A., in consideration of B.'s paying off a debt and taking on himself a liability of A., conveyed to B. and another in fee certain lands upon trusts for the benefit of C. the wife of A., it was held that there was a sufficient consideration moving between the parties to prevent the transaction from being a voluntary settlement either by A. or B. within the meaning of s. 47 of the Bankruptcy Act, 1883: *Re Dale and Elsden*, W. N. 1892, p. 56.

Purchaser for value from trustees of settlement.

In *Briggs* v. *Spicer*, [1891] 2 Ch. 127, it was held that a purchaser for value from the trustees of a voluntary settlement is a "party claiming under the settlement" within s. 47 of the Bankruptcy Act, 1883, so as to prevent him from passing to a purchaser from him a title not liable to be defeated by the trustee in bankruptcy of the original settlor.

The word "void" in this section means "voidable:" *Re Brall, Ex parte Norton*, 41 W. R. 623.

Chapter IV.—Obligations to Settle Property.

Marriage Articles, &c.

Rule in Shelley's Case defeated.

P. 198, line 19.—After *Phillips* v. *James*, add *Evans* v. *Evans*, [1892] 2 Ch. 173, C. A.

P. 201, line 33.—After *Re Rownson*, add *Johnstone* v. *Mappin*, 64 L. T. 48.

Equity to Settlement.

Amount to be settled.

P. 215, line 15.—As to circumstances which may influence the Court in determining the proportion to be settled for the benefit of a wife who sets up her equity to a settlement: see *Roberts* v. *Cooper*, [1891] 2 Ch. 335, C. A.

Chapter V.—Modes of Settlement of Property.

Realty and Chattels Real.

Settlement of land on trust for sale.

Pp. 228 to 234.—Where a tenant for life of income of land held on trust for sale was virtually in the position of tenant for life in possession of the land till sale, *North*, J., made an order under s. 7 of the Settled Land Act, 1884, giving leave to such tenant for life to sell the land: *Re Harding's Estate*, [1891] 1 Ch. 60.

Chapter VI.—Personal Settlements.

Investment of Trust Funds.

Repeals.

Pp. 256, 257.—The enactments of s. 32 of the stat. 22 & 23 Vict. c. 35, the whole of the stat. 30 & 31 Vict. c. 132, and s. 11 of the stat. 23 & 24 Vict. c. 38, here cited, are repealed by the Trust Investment Act, 1889, which was passed while the sheets of Vol. VI. were being printed, and which is set out and considered in a later part of that volume, at pp. 794 *et seq.*

Cash under control of Court.

P. 259, *ad fin.*—After *Ex parte St. John Baptist College*, add *Re Brown*, 63 L. T. 131, 38 W. R. 529, 59 L. J. Ch. 530, C. A.

What are "real securities."

P. 269, *ad fin.*—After *Re Christmas*, *Martin* v. *Lacon*, add *Re David*, *Buckley* v. *National Life Boat Institution*, 43 Ch. D. 27, C. A.

Railway debentures, &c.

P. 270, line 11.—After *Gardner* v. *London*, *Chatham & Dover Rail. Co.*, add *Blaker* v. *Herts & Essex Waterworks Co.*, 41 Ch. D. 399; *Re Parker*, *Wignall* v. *Park*, [1891] 1 Ch. 682. See also *Re Sharp*, *Rickett* v. *Sharp*, 45 Ch. D. 286, C. A. (public company); *Elve* v. *Boyton*, [1891] 1 Ch. 501, C. A. (incorporated by Act of Parliament).

Duties, &c., of Trustees as to Investment.

Depreciation in value of security.

P. 273, line 29.—Where mortgaged land has fallen in value, so that the mortgage debt has come to exceed two-thirds of the actual value of the property, trustees are not absolutely bound to call in the mortgage forthwith, but they may take

into consideration the solvency of the mortgagor, and generally the circumstances of the case: *Re Medland, Eland* v. *Medland*, 41 Ch. D. 476.

Trustees must choose valuer.

P. 276, line 34.—Where trustees, on the occasion of an advance, adopted a valuation not made on their behalf by a valuer of whom they knew nothing, it was held that the trustees were not protected by either the fourth or fifth sections of the Trustee Act, 1888: *Re Walker, Walker* v. *Walker* (No. 1), 62 L. T. 449, 59 L. J. Ch. 386.

Liability of valuer.

P. 277, line 11.—After *Cann* v. *Wilson*, add *Scholes* v. *Brook*, W. N. 1891, 16, 101, 64 L. T. 674, C. A.

Mixing trust funds

P. 279, line 21.—After *Cook* v. *Addison*, add *Re Massingberd's Settlement, Clark* v. *Trelawny*, 63 L. T. 296, C. A., where trustees who had lent on a contributory mortgage were held liable either to replace the stock or to repay the proceeds of trust funds sold out and invested on the mortgage at the option of the remainderman.

Power to vary investments.

P. 283, line 17.—As to the insertion of express powers to vary investments, see the Trust Investment Act, 1889, set out and considered Vol. VI., pp. 794 *et seq.*, and see *post*, p. 330.

Liability for improper investment.

P. 284, line 5.—It has been held in an Irish case (*Jones* v. *Julian*, 25 L. R. Ir. 45), that a trustee who seeks to take advantage of s. 5 of the Trustee Act, 1888, must show that at the time he made an investment it was in all respects, except as regards value, a proper investment. See also *Re Massingberd's Settlement, supra.*

Option to take to improper investment.

P. 284, line 15.—A sole trustee advanced £1300 on a mortgage of freeholds valued at £1750: he subsequently retired and transferred the security to new trustees, who sold the property by auction for a price insufficient to satisfy the amount due on the mortgage, without giving notice to the retired trustee. It was held that the investment having been proper in all respects except as regards the amount advanced, the new trustees had a right to sell without notice to the retired trustee, and that he was liable to make up the deficiency: *Re Salmon, Priest* v. *Uppleby*, 42 Ch. D. 351, C. A.

Breach of trust

P. 284, line 18.—Where a deceased trustee has left the

trust funds in a proper state of investment at his death, his estate is not liable for breach of trust committed after his death: *Re Palk, Chamberlain* v. *Drake*, W. N. 1892, p. 112, 41 W. R. 28. — after death of trustee.

Trusts of Income.

P. 287, line 16.—After *Trappes* v. *Meredith*, add *Metcalfe* v. *Metcalfe*, [1891] 3 Ch. 1, C. A. — Forfeiture on bankruptcy.

P. 291, line 4.—The expression "married woman" of course means a woman married, or whose title has accrued since the commencement of the Married Women's Property Act, 1882. — Separate use.

P. 293, line 3.—The rule laid down as to costs in *Re Glanvill* does not apply where the proceedings are taken under the Married Women's Property Act, 1882, without a next friend. In such a case trustees are allowed to retain costs, ordered to be paid by a married woman out of any balance of income in their hands at the time when the order is made: *Cox* v. *Bennett*, [1891] 1 Ch. 617, C. A. — Costs of proceedings by woman restrained from anticipation.

P. 294, line 13.—*London & Prov. Bank* v. *Bogle*, was approved in *Axford* v. *Reid*, 22 Q. B. D. 548, C. A. — Extent of restraint on anticipation.

P. 297, *ad fin.*—For recent cases as to the removal by the Court of restraint on anticipation, see *ante*, pp. 25, 26. — Removal of restraint.

P. 303, line 34.—As to what consent is sufficient, see *Re Smith, Keeling* v. *Smith*, 44 Ch. D. 654. — Marriage with consent.

Provisions for Children.

P. 304, line 3.—Where funds were settled upon trust for the children of the settlor as he should appoint, and in default of appointment to the children equally with the usual hotchpot clause, and the settlor by his will appointed life interests to two of his daughters with remainders over which were void, it was held that the life interests must be immediately valued and brought into hotchpot: *Re Heathcote, Trench* v. *Heathcote*, W. N. 1891, p. 10. — Hotchpot clause.

P. 304, line 29.—Where appointees under a power in a

deed which contained no hotchpot clause were rightly paid a portion of the funds appointed, and by reason of a subsequent loss the trust funds became insufficient to pay all the appointees in full, it was held that the portions paid to some of the appointees were not liable to be brought into account as under a hotchpot clause: *Re Bacon's Settlement Trusts, Hutton* v. *Anderson*, 42 Ch. D. 559.

Maintenance.

P. 305, *ad fin.*—It has been held by *North*, J., that the statutory power of applying income for the maintenance of children does not apply where there is a class which may be increased by children coming into existence: *Re Jeffery, Burt* v. *Arnold*, [1891] 1 Ch. 671. And further, that even where the class is not capable of increase, trustees can apply income for the maintenance of children belonging to the class only until such time as the interest of one of them becomes vested, the whole of the income then going to the child who first attains 21 to the exclusion of the others: *Re Jeffery, supra; Re Adams, Adams* v. *Adams*, [1893] 1 Ch. 329. But *Chitty*, J., has expressed his dissent from this latter view: *Re Burton's Will, Banks* v. *Heaven*, [1892] 2 Ch. 38.

It is obvious that the first point is not likely to arise with reference to an ordinary marriage settlement; but the decisions of *North*, J., on the second point seem to render it generally advisable to insert express powers of maintenance and accumulation in settlements of personalty.

Where a testatrix bequeathed her residue to an infant, it was held that, the estate being cleared, and the residue being ascertained, the executor might apply the income to the maintenance of the infant under s. 43 of the Conveyancing Act, 1881: *Re Smith, Henderson-Roe* v. *Hitchins*, 42 Ch. D. 32.

Discretion of trustees.

P. 309, line 28.—After *Re Hodge's Estate*, add *Re Coleman, Henry* v. *Strong*, 39 Ch. D. 443, C. A. But the Court will enforce the proper and timely exercise of the power, and, if the trustees fail to exercise it, the Court may exercise a discretionary power in such manner as may seem best: *Re Wells, Wells* v. *Wells*, 43 Ch. D. 281. See also *Re Burrage, Burningham* v. *Burrage*, 62 L. T. 752.

Assignment of interest of beneficiary.

P. 309, line 23.—Where property was held in trust to apply the whole or any part of the income for the maintenance, &c.,

of A., his wife or children in such manner as the trustees in their discretion should think fit, and A. assigned his interest by way of mortgage, it was held by *Kekewich*, J., that the trustees were liable for all sums paid to or on behalf of A. after they had received notice of the assignment: *Re Neil, Hemming* v. *Neil*, W. N. 1890, p. 92, 62 L. T. 649. See also *Re Coleman, supra.*

Ultimate Trusts.

"Without having been married."

P. 319, line 11.—Certain funds were settled on the intended marriage of a spinster with an ultimate trust in favour of her next of kin as if she had died "without having been married"; her husband predeceased her, and there was no issue of that marriage; the same property was resettled on her second marriage; it was held that the children of the second marriage were not excluded from taking the funds by the terms of the ultimate trust of the first settlement: *Re Arden's Settlement*, W. N. 1890, p. 204.

When next of kin ascertained.

P. 320, line 29.—The principle of construction adopted in *Clarke* v. *Hayne* (see Addenda to Vol. VI.) was followed in *Re King's Settlement, Gibson* v. *Wright*, 60 L. T. 745.

Covenants to Settle Future Property.

Exclusion of husband's life-interest.

P. 321, line 17.—After *St. Aubyn* v. *Humphreys*, add *Re Crawshay, Walker* v. *Crawshay*, [1891] 3 Ch. 176, where a life interest derived under a will was subject to forfeiture on alienation.

Addendum.

P. 325, line 20.—*Fisher* v. *Shirley* (see Addenda to Vol. VI.), is now reported 43 Ch. D. 290.

Defeasible reversionary interest of wife.

P. 330, line 18.—Where a marriage settlement contained a covenant by the husband to settle all personal estate which during the coverture should vest in him in right of his wife or in her by bequest, gift, or otherwise, it was held that a reversionary interest which vested in the wife during the

coverture, liable to be divested by exercise of a power of appointment, was included by the covenant: *Re Ware, Cumberlege* v. *Cumberlege-Ware*, 45 Ch. D. 269.

Settlement of future property is subject to equities.

P. 331, line 10.—Where a marriage settlement contained a covenant to settle after-acquired property of the wife, who during the coverture became administratrix of an intestate and beneficially entitled to one moiety of his residue; part of the intestate's estate was lost, for which loss the wife became liable; it was held that only the balance which remained after the loss had been made good fell within the settlement by virtue of the covenant: *Re Hervey, Short* v. *Parratt*, 61 L. T. 429.

Exception from covenant.

P. 333, line 19.—As to the effect of the exception from a covenant to settle after-acquired property of plate, trinkets, furniture, and jewels, as regards wedding presents, see *Re Jamieson, Ex parte Pannell*, 60 L. T. 159, 37 W. R. 464.

P. 333, line 27.—After *Kane* v. *Kane*, add *Re Berens' Settlement, Berens* v. *Benyon*, W. N. 1838, p. 131, 59 L. T. 626.

Power to withdraw funds from settlement.

P. 334, line 30.—Where a settlement contained a power to raise a certain fund for the benefit of the survivor of the husband and wife if there should not be more than two children of the marriage, and there were no children of the marriage, it was held that the fund was raiseable after the death of the wife: *Wilkinson* v. *Thornhill*, 61 L. T. 362.

Trustee Clauses.

Separate sets of trustees.

P. 341, line 8.—Trustees may now be appointed for separate parts of property, though no new trustee be appointed of other parts, see Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 6, set out *ante*, p. 52.

Indemnity for breach of trust.

P. 346, line 25.—As to the circumstances which may influence the Court in the exercise of its judicial discretion as to making an order under s. 6 of the Trustee Act, 1888 (51 & 52 Vict. c. 59), so as to indemnify trustees for breach of trust committed at the request of the beneficiary, see *Ricketts* v. *Ricketts*, 64 L. T. 263; *Griffith* v. *Hughes*, [1892] 3 Ch. 105. In the latter case, *Kekewich*, J., held that the words "in

writing" in this section apply only to "consent" and not to "instigation or request."

P. 348, line 15.—After *Burridge* v. *Row*, add *Strutt* v. *Tippett*, W. N. 1890, p. 23, 62 L. T. 475, C. A. Payment of premiums by stranger.

P. 352, line 16.—Where a trustee employs a solicitor or other agent he must exercise a proper discretion in paying him his remuneration: *Re Weall, Andrews* v. *Weall*, 42 Ch. D. 674. Where a trustee has been appointed by the Court to receive rents and manage the estate with a commission on the rental, he cannot charge the estate with additional costs for payments made to a collector of the rents: *Cox* v. *Bennett*, 39 W. R. 308, C. A. Employment of solicitor or other agent.

P. 353, note (*p*).—After *Burgess* v. *Vinicome*, add *Stone* v. *Lickorish*, [1891] 2 Ch. 363. Rule in *Cradock* v. *Piper*.

P. 356, line 17.—In *Re Bowden, Andrew* v. *Cooper*, 45 Ch. D. 444, the executor of a deceased trustee was held entitled, by virtue of s. 8, sub-s. (1) (*b*) of the Trustee Act, 1888, to plead lapse of time (as he might have done in an action of debt), in an action for breach of trust committed by the deceased trustee. Statute of Limitations may be pleaded by trustees.

Chapter VII.—Real Settlements.

Mutual Rights of Husbands and Wives.

P. 367, line 35.—The decision of *Kay*, J., in *Smart* v. *Tranter*, was reversed by the Court of Appeal, 43 Ch. D. 587. *Addendum.*

P. 368, line 17.—The view here expressed, to the effect that a husband's right to curtesy remains unaffected by the Married Women's Property Act, 1882, has been judicially affirmed by *Stirling*, J., in *Hope* v. *Hope*, [1892] 2 Ch. 336. Curtesy.

Real Settlements Generally.

P. 379, line 11.—Add reference to *Case* v. *Case*, W. N. 1889, p. 194, 61 L. T. 789, 38 W. R. 183, where the Court declined to interfere in a family arrangement made for the Family arrangement.

purpose of settling a doubt which had arisen as to the construction of a foreign settlement.

Limitations in Real Settlements.

Waste.

P. 389, *ad fin.*—After *Cowley* v. *Wellesley*, add *Dashwood* v. *Magniac*, [1891] 3 Ch. 306, C. A., where the law of waste in regard to timber was fully discussed.

Legal tenant for life.

P. 395, line 23.—In *Re Cartwright, Avis* v. *Newman*, 41 Ch. D. 532, *Kay*, J., after reviewing the statutes of Marlbridge and Gloucester, and the reported cases held that the estate of a legal tenant for life is not liable for permissive waste in the absence of an express obligation not to permit waste.

Executory limitation.

P. 400, line 22.—After *Miles* v. *Jarvis*, add *Dean* v. *Dean*, [1891] 3 Ch. 150.

Payment of jointure "without deduction."

P. 402, lines 28 to 34.—The cases here cited do not seem to bear out the conclusion stated as in all of them other expressions occurred in the context. If the jointure is to be free of succession duty, this should be expressly mentioned.

Portions.

P. 406, line 39.—After *Domvile* v. *Winnington*, add *Re Fitzgerald's Settled Estates, Saunders* v. *Boyd*, [1891] 3 Ch. 394.

Time of vesting.

P. 407, line 21.—After *Wakefield* v. *Maffet*, add *Re Hamlet, Stephen* v. *Cunningham*, 39 Ch. D. 426, C. A., where it was pointed out that the rule in *Howgrave* v. *Cartier* merely raises a presumption which may be rebutted by the terms of the instrument.

Powers—Settled Land Acts.

Definition of settlement.

P. 440, line 38.—The question as to whether several instruments constitute one or more "settlements" has been raised in several instances with reference to the application of capital moneys in improvements: see *Re Lord Stanford's Settled Estates*, 43 Ch. D. 84; *Re Mundy's Settled Estates*, [1891] 1 Ch. 399, C. A.; *Re Byng's Settled Estates*, [1892] 2 Ch. 219.

By s. 4 of the Settled Land Act, 1890 (53 & 54 Vict. c. 69), it is enacted as follows:—

Instrument in consideration of marriage, &c., to be part of the settlement.

(1.) "Every instrument whereby a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement is to be deemed one of the instruments creating the settlement, and not an instrument vesting in any person any right as assignee for value within the meaning or operation of section fifty of the Act of 1882.

(2.) This section is to apply and have effect with respect to every disposition before as well as after the passing of the Act, unless inconsistent with the nature or terms of the disposition."

Definition of land.

P. 441, note (*x*).—This statutory definition of land is repealed, but virtually re-enacted by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 41.

Settled land.

An infant's share as next of kin in partnership land is "settled land": *Re Wells*, W. N. 1883, p. 111.

Tenant for life.

Where a testator directed rents to be accumulated during his son's life, and the period of accumulation permitted by the Thellusson Act ran out, it was held that the son, as heir at law, became tenant for life of the property, or capable of exercising the statutory powers of a tenant for life: *Re Atherton*, W. N. 1891, p. 85.

Trustees for the purposes of the Act.

P. 443, note (*e*).—By s. 16 of the Settled Land Act, 1890, it is enacted as follows:—

"Where there are for the time being no trustees of the settlement within the meaning and for the purposes of the Act of 1882, then the following persons shall, for the purposes of the Settled Land Acts 1882 to 1890 be trustees of the settlement; namely,

(i.) The persons (if any) who are for the time being under the settlement trustees, with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold, or with power of consent to or approval of the exercise of such a power of sale, or, if there be no such persons, then

(ii.) The persons (if any) who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale, of the land to be sold, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not."

Creation of easements.

P. 448, note (*z*).—As to the creation of easements, &c., on an exchange or partition, see s. 5 of the Settled Land Act, 1890, set out *sub tit.* EXCHANGE, *ante*, p. 133.

Dwellings of working classes.

P. 449, note (*a*).—Sect. 11 of the stat. 48 & 49 Vict. c. 72, is repealed, but virtually re-enacted by s. 74 of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70). The expression "working classes" in this enactment includes "all classes of persons who earn their livelihood by wages or salaries": see s. 18 of the Settled Land Act, 1890. As to sales, exchanges, and leases of settled lands to County Councils for the purposes of small agricultural holdings, see the Small Holdings Act, 1892 (55 & 56 Vict. c. 31).

Option of purchase in building lease.

P. 450, note (*e*).—By s. 2 of the Settled Land Act, 1889 (52 & 53 Vict. c. 36), it is enacted as follows:—

"Any building lease, and any agreement for granting building leases, under the Settled Land Act, 1882, may contain an option, to be exercised at any time within an agreed number of years not exceeding ten, for the lessee to purchase the land leased at a price fixed at the time of making of the lease or agreement for the lease, such price to be the best which having regard to the rent reserved can reasonably be obtained, and to be either a fixed sum of money or such a sum of money as shall be equal to a stated number of years' purchase of the highest rent reserved by the lease or agreement."

Price to be capital money.

Sect. 3. "Such price when received shall for all purposes be capital money arising under the Settled Land Act, 1882."

The regulations contained in ss. 7 and 9 of the Settled Land Act, 1882, must now be read with reference to the provisions as to leases for 21 years, and mining leases respectively, contained in ss. 7 and 8 of the Settled Land Act, 1890, set out *ante*, p. 136.

Fee farm grants for building purposes.

P. 451, line 25.—The powers of the Court to authorise a tenant for life to make building grants in perpetuity at fee-farm or other rents is supplemented by s. 9 of the Settled Land Act, 1890, which is as follows:—

Power to reserve a rent-charge on a grant in fee simple.

"Where, on a grant for building purposes by a tenant for life, the land is expressed to be conveyed in fee simple with or subject to a reservation thereout of a perpetual rent or rentcharge, the reservation shall operate to create a rent charge in fee simple issuing out of the land conveyed, and having incidental thereto all powers and remedies for recovery thereof conferred by section

forty-four of the Conveyancing and Law of Property Act, 1881, and the rentcharge so created shall go and remain to the uses on the trusts and subject to the powers and provisions which, immediately before the conveyance, were subsisting with respect to the land out of which it is reserved." 44 & 45 Vict. c. 41.

P. 455, *ad fin.*—Sect. 15 of the Settled Land Act, 1882, is repealed by s. 10 of the Settled Land Act, 1890, which enacts as follows:— Restriction on sale of mansion, etc.

(1.) "From and after the passing of this Act, section fifteen of the Act of 1882, relating to the sale or leasing of the principal mansion-house, shall be and the same is hereby repealed."

(2.) "Notwithstanding anything contained in the Act of 1882, the principal mansion-house (if any) on any settled land, and the pleasure grounds and park and lands (if any) usually occupied therewith, shall not be sold, exchanged, or leased by the tenant for life without the consent of the trustees of the settlement or an order of the Court."

(3.) "Where a house is usually occupied as a farmhouse, or where the site of any house and the pleasure grounds and park and lands (if any) usually occupied therewith do not together exceed twenty-five acres in extent, the house is not to be deemed a principal mansion-house within the meaning of this section."

As to the case of settled lands situate in several counties distant from each other with only one mansion-house, see *Re Thompson*, 21 L. R. Ir. 109.

The Court in the exercise of its discretion in making an order under this section is at liberty to have regard not only to the interests of the persons entitled in remainder under the settlement, but also to the well being of the settled land and of the tenants and labourers residing or employed thereon: *Bruce* v. *Marquis of Ailesbury*, [1892] A. C. 356. Discretion of Court to allow sale.

P. 456, line 13.—The Settled Land Act, 1890, s. 11 gives to tenants for life power to raise money by mortgage for the purpose of paying off incumbrances on the settled land. This section is as follows:— Power to raise money by mortgage.

(1.) "Where money is required for the purpose of discharging an incumbrance on the settled land or part thereof, the tenant for life may raise the money so required, and also the amount properly required for payment of the costs of the transaction on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple or other estate or interest the subject of the

settlement, or by creation of a term of years in the settled land, or any part thereof, or otherwise, and the money so raised shall be capital money for that purpose, and may be paid or applied accordingly."

(2). "Incumbrance in this section does not include any annual sum payable only during a life or lives or during a term of years absolute or determinable."

Capital money arising under the Act.

P. 458, note (*b*).—After *Re Mackenzie's Trusts*, add *Re Mundy's Settled Estates*, [1891] 1 Ch. 399, C. A. See also *Re Tennant*, 40 Ch. D. 594, where the money was proceeds of sale of settled land sold under the Settled Estates Act, 1877.

Discharge of incumbrances.

P. 459, note (*h*).—After *Re Chaytor's Settled Estates*, add *Re Lord Stamford's Settled Estates*, 43 Ch. D. 84, where *Stirling*, J., held that, when capital money arises from the part of the settled land which is subject to a charge, it can be applied in discharge of the incumbrances affecting the other part. See also *Re Mundy's Settled Estates*, [1891] 1 Ch. 399, C. A.; *Re Byng's Settled Estates*, [1892] 2 Ch. 219.

Payment of bonus for redemption.

P. 460, note (*k*).—The decision of *Kay*, J., in *Re Lord Sudeley's Settled Estates* was disapproved of by the Court of Appeal in *Re Lord Egmont's Settled Estates*, 45 Ch. D. 395, where it was held that s. 1 of the Settled Land Act, 1887, authorises trustees to apply capital moneys in redeeming a terminable rent-charge for improvements, and to allow a bonus in lieu of interest.

Capital money in Court may be paid out to trustees.

P. 462, *ad fin.*—By s. 14 of the Settled Land Act, 1890, it is enacted that—

"All or any part of any capital money paid into Court may, if the Court thinks fit, be at any time paid out to the trustees of a settlement for the purposes of the Settled Land Acts 1882 to 1890."

This meets the decision in *Cookes* v. *Cookes*, cited in note (*o*).

P. 462, note (*o*).—After *Re Duke of Rutland's Settlement*, add *Re Wootton's Estate*, W. N. 1890, p. 158.

Costs of abortive sale.

P. 463, note (*p*).—Where trustees, in proper exercise of their powers under the Settled Lands Acts, ineffectually

attempted to sell settled lands they were allowed their costs of the attempted sale: *Re Smith's Settled Estates*, [1891] 3 Ch. 65.

P. 467, note (*a*).—*Re Earl of Stamford's Estate* is now also reported 43 Ch. D. 84. See also *Re Newton's Settled Estates*, W. N. 1890, p. 24, C. A. Repairs.

P. 470, line 5.—By s. 13 of the Settled Land Act, 1890, it is enacted as follows:— Improvements.

"Improvements authorised by the Act of 1882 shall include the following; namely, Application of capital money for bridges;

(i.) Bridges;

(ii.) Making any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let; buildings.

(iii.) Erection of buildings in substitution for buildings within an urban sanitary district taken by a local or other public authority, or for buildings taken under compulsory powers, but so that no more money be expended than the amount received for the buildings taken and the site thereof;

(iv.) The rebuilding of the principal mansion-house on the settled land: Provided that the sum to be applied under this sub-section shall not exceed one-half of the annual rental of the settled land." Rebuilding of mansion-house.

P. 470, *ad fin.*—See now the Housing of the Working Classes Act, 1890, *ante*, p. 322. Labourers' dwellings.

P. 472, line 15.—By s. 15 of the Settled Land Act, 1890, it is enacted that—

"The Court may, in any case where it appears proper, make an order directing or authorising capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts, 1882 to 1890, notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by the Act of 1882, to the trustees of the settlement or to the Court." Court may order payment for improvements executed.

This meets the decision in *Re Hotchkin's Settled Estates*, so far as regards expenditure on improvements incurred after the commencement of this Act. But it would seem that the Act is not retrospective: see *Re Ormrod's Settled Estate*, [1892] 2 Ch. 318; see also *Re Dalison's Settled Estate*, [1892] 3 Ch. 522.

P. 474, line 16.—As to the scope and effect of s. 2 of the S. L. Act, 1887, s. 2.

Settled Land Act, 1887, see *Re Howard's Settled Estate*, [1892] 2 Ch. 233.

Contracts.

P. 476, line 19.—The powers given by s. 31 of the Settled Land Act, 1882, are extended to the case of contracts having priority to the settlement by s. 6 of the Settled Land Act, 1890, which is as follows:—

Power to complete predecessor's contract.

"A tenant for life may make any conveyance which is necessary or proper for giving effect to a contract entered into by a predecessor in title, and which if made by such predecessor would have been valid as against his successors in title."

Application of income.

P. 478, note (*h*).—As to the duty of trustees as to the application of the rents of leaseholds purchased with capital moneys arising from the sale of freehold ground-rents, see *Re Bowyer's Settled Estates*, W. N. 1892, p. 48.

Heirlooms.

P. 480, note (*o*).—A tenant for life, in exercising the power of selling heirlooms conferred by s. 37 of the Settled Land Act, 1882, is bound to consider not only his own interests, but also the interests of those entitled in remainder; and the Court, in the exercise of its discretion as to giving or withholding its sanction to the sale, must be satisfied that, under the circumstances of the particular case, these interests have been properly taken into consideration: *Re Earl of Radnor's Will Trusts*, 45 Ch. D. 402, C. A. The Court cannot sanction a sale of heirlooms *ex post facto*: *Re Ames, Ames* v. *Ames*, [1893] 2 Ch. 479.

Where a new mansion-house had been purchased with capital moneys, and it was desired to sell the original mansion-house, the Court gave leave for the removal to the new house of such heirlooms as were suitable for removal, and for sale of the remainder of the heirlooms: *Browne* v. *Collins*, W. N. 1890, p. 78, 62 L. T. 566.

Notice to trustees.

P. 482, line 3.—As to the protection of a transaction under the Settled Land Acts carried out by the parties in good faith where at the time there were no "trustees of the settlement" in existence to whom notice could be given under s. 45 of the Act of 1882, see *Moggridge* v. *Clapp*, [1892] 3 Ch. 382, C. A.

By s. 7 of the Settled Land Act, 1890 (set out *sub tit.* LEASES, *ante*, p. 136), notice is dispensed with in the case of leases for terms not exceeding 21 years.

Board of Agriculture.

P. 485, *ad fin.*—The powers of the Land Commissioners are now transferred to and vested in the Board of Agriculture: see stat. 52 & 53 Vict. c. 30, s. 13.

Marriage settlements, &c.

P. 487, line 5.—Marriage settlements and family arrangements are to be deemed part of the settlement, and not assignments for value within the meaning of s. 50 of the Settled Land Act, 1882: see s. 4 of the Settled Land Act, 1890, set out *ante*, p. 321.

Addendum.

P. 488, note (*a*).—*Re Lord Stamford's Estate* is now also reported 43 Ch. D. 84.

Provision enabling dealings with tenant for life.

With regard to dealings as between the tenant for life and the estate, s. 12 of the Settled Land Act, 1890, enacts as follows:—

"Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the limitations of the settlement, or an exchange is to be made with him of settled land for other land, or a partition is to be made with him of land an undivided share whereof is subject to the limitations of the settlement, the trustees of the settlement shall stand in the place of and represent the tenant for life, and shall, in addition to their powers as trustees, have all the powers of the tenant for life in reference to negotiating and completing the transaction."

P. 513, line 5.—Add reference to *Wells* v. *Wells*, W. N. 1890, p. 29.

S. L. A. 1890, ss. 16, 17.

P. 518, note (*o*).—As to trustees for the purposes of the Settled Land Acts, see now s. 16 of the Settled Land Act, 1890, set out *ante*, p. 321. The provisions of the Conveyancing Act, 1881, with reference to the appointment of new trustees, are rendered applicable to appointments of trustees for the purposes of these Acts; see s. 17 of the Act of 1890, set out *ante*, p. 52.

Stamp duty.

No stamp duty is required on an order appointing trustees for the purposes of the Acts: see *Re Potter*, W. N. 1889, p. 69; *Re Kennaway*, W. N. 1889, p. 70.

Chapter VIII.—Disentailing Assurances.

Bar of entail in copyholds.

P. 524, *ad fin.*—In *Ex parte London School Board, Re Hart*, 41 Ch. D. 547, it was held that an estate tail in copy-

holds was barred by an enfranchisement made by the lord to the trustees of the will of a copyholder tenant in tail, and a subsequent conveyance of the fee by the trustees to his heiress in tail.

Disentailer by mortgage.

P. 535, line 21.—Where an estate tail is barred for the purpose of giving to the mortgagee a fee simple security, if it is desired that the title to the equity of redemption should be altered, care should be taken that such intention is clearly expressed: *Plomley* v. *Felton*, 14 App. Cas. 61, P. C.; see also *Re Reynolds, Williams* v. *Mitchell*, W. N. 1891, p. 150.

Chapter IX.—Stamp Duties.

Pp. 540 to 543.—As to stamp duties on settlements, see *post, sub tit.* Stamps.

PRECEDENTS.

Precedent I.—Settlement of Stock belonging to Wife.

Power to vary investments.

P. 545, lines 31 to 35.—The investment clause in this Precedent being limited to statutory investments, the insertion of an express power to vary investments appears to be unnecessary, and may be omitted, if desired: see *post*, p. 330.

Powers of maintenance, &c.

P. 547, note (*h*).—Having regard to the decisions cited *ante*, p. 316, the insertion of express powers of maintenance and accumulation in settlements appears to be generally advisable.

Precedent III.—Settlement of Life Policy.

Assignment "as settlor," or "as beneficial owner."

P. 557, line 33.—The husband is here made to assign the policy "as settlor," thereby importing into the assignment only the statutory covenant for further assurance limited; see s. 7, sub-s. 1 (E), of the Conveyancing Act, 1881. But, as suggested in Vol. VI., p. 248, there seems to be no sufficient reason, in the case of a settlement of a life

policy, why the assignment should not be made by the settlor "as beneficial owner," thereby importing full covenants that the policy is valid and free from incumbrances, and for further assurance, as in Precedent VIII. The practice of conveyancers varies on this point.

Precedent XXXVI.—Strict Settlement of Realty, &c.

Extension of powers of S. L. Acts.

Pp. 705 to 710.—On p. 705, *ad fin.*, for "Settled Land Acts, 1882 to 1889," read "Settled Land Acts, 1882 to 1890." The extending clauses here suggested do not seem to be rendered unnecessary in appropriate cases by any of the provisions of the Settled Land Act, 1890, which are somewhat limited in their operation; except that the power for a tenant for life to purchase, &c., settled lands (p. 709), may, if desired, be omitted in reliance on s. 12 of that Act, set out *ante*, p. 327. It is, however, to be observed that this section does not provide for granting leases to, or taking leases from a tenant for life.

Precedent XXXVIII.—Resettlement of Realty.

Rent varying with price of minerals.

P. 745, *ad fin.*—The power to grant mining leases at rents varying with the market price of minerals may be omitted in reliance on s. 8 of the Settled Land Act, 1890, set out *ante*, p. 136.

APPENDIX TO DISSERTATION.

Trust Investment Act, 1889.

Pp. 794 to 800.—The following decisions have been given on points arising under this Act:—

Building society's funds.

Funds of a benefit building society, invested in the names of trustees under the direction of the board or committee of

management, are not "trust funds" within the meaning of the Act: *Re National Permanent Mutual Benefit Building Society*, 43 Ch. D. 431.

Charitable corporation.

It has been held by *North*, J., that an incorporated institution holding funds for charitable purposes is a "trustee," with power to invest the funds in manner authorised by this Act: *Re Manchester Royal Infirmary, Manchester Royal Infirmary* v. *Att.-Gen.*, 43 Ch. D. 420.

Power to vary investments.

A trustee, by virtue of the statutory power given to him to invest "any funds in his hands," may convert into money any invested trust funds and re-invest the proceeds in any of the stocks or securities authorised by the Act, although the settlement contains no express power to vary investments: *Hume* v. *Lopes*, [1892] A. C. 112, overruling on this point, *Re Manchester Royal Infirmary, supra*. If, however, the instrument permits investments other than those authorised by the Act, it is apparently still advisable to insert an express power to vary investments.

Appropriation of investments.

Where a settlement directs trustees to set apart or appropriate certain specified stocks upon which the trust funds are invested to answer a particular purpose, *e.g.*, to provide for an annuity, the trustees are not empowered by virtue of s. 3 of the Act, to appropriate for that purpose any other stocks authorised by the Act: *Re Owthwaite, Owthwaite* v. *Taylor*, [1891] 3 Ch. 494.

SPECIAL INSTRUMENTS.

Precedent I.—Agreement for Hire and Purchase of Furniture.

P. 803, note (*a*).—As to the validity or otherwise of agreements for the purchase of furniture on the hire system, see *ante*, p. 174.

Precedent III.—Assent by Executor.

P. 808, note (*e*).—The doctrine of assent applies to a residuary as well as to a specific bequest, and an executor may assent to part of such a legacy without assenting to the whole: *Austin* v. *Beddoe*, 41 W. R. 619.

Precedent XVIII.—Lease under Ecclesiastical Leasing Acts.

P. 855, note (*h*).—For "21 & 22 Vict. c. 27," read 21 & 22 Vict. c. 57. *Erratum.*

Precedent XX.—Conveyance of Land for a Chapel.

P. 862, note (*p*).—If the land conveyed does not exceed two acres, and the conveyance is made in good faith and for valuable consideration, enrolment either of the assurance or of the instrument declaring the trust is unnecessary, see the Mortmain and Charitable Uses Act, 1888, s. 7, set out Vol. VI., p. 871. Enrolment.

P. 867, note (*z*).—Sir Morton Peto's Act, is now extended by the Trustees Appointment Act, 1890, see *ante*, p. 54. Appointment of trustee.

By the stat. 32 & 33 Vict. c. 26, the provisions of Sir Morton Peto's Act were extended to burial grounds, but without prejudice to the provisions of the Burial Acts.

STAMP DUTIES.

PRELIMINARY DISSERTATION.

CHAPTER I.—DUTIES IMPOSED BY THE STAMP ACT, 1891.

REPEALS.

Stat. 54 & 55 Vict. c. 39.

P. 1 to 100.—The liability of instruments to stamp duty is now mainly regulated by the Stamp Act, 1891 (54 & 55 Vict. c. 39). By that Act (see s. 123, and 3rd schedule), and by the Stamp Duties Management Act (54 & 55 Vict. c. 38), s. 28 and schedule, the following enactments set out or referred to in this chapter of Vol. VII. are repealed:

3 & 4 Vict. c. 96 (Postage Duties), ss. 19, 21 (in part), 22 to 30.

13 & 14 Vict. c. 97 (Stamp Duties).

30 & 31 Vict. c. 23 (Customs and Inland Revenue).

33 & 34 Vict. c. 97 (Stamp Act, 1870).

33 & 34 Vict. c. 98 (Stamp Duties Management Act, 1870).

34 & 35 Vict. c. 4 (Foreign Securities, Mortgages of Stock, and Proxy Papers).

37 & 38 Vict. c. 19 (Admission of Barristers and Advocates).

37 & 38 Vict. c. 26 (Canadian Stock).

39 & 40 Vict. c. 6 (Sea Insurance).

40 & 41 Vict. c. 59 (Colonial Stock), s. 2, and first para. of s. 3.

43 & 44 Vict. c. 20 (Inland Revenue Act, 1880) ss. 53 to 56.

44 & 45 Vict. c. 12 (Customs and Inland Revenue Act, 1881), ss. 44 to 47.

45 & 46 Vict. c. 72 (Revenue Act, 1882), ss. 8 to 10, 13, 14, 15, and 17.

47 & 48 Vict. c. 62 (Revenue Act, 1884), ss. 8 to 10.

48 & 49 Vict. c. 51 (Customs and Inland Revenue Act, 1885), s. 21.

50 & 51 Vict. c. 15 (Customs and Inland Revenue Act, 1887), ss. 5 to 16.

51 & 52 Vict. c. 8 (Customs and Inland Revenue Act, 1888), ss. 10 to 20, and first schedule.

The following enactments relating to stamp duties passed since vol. VII. of Bythewood and Jarman's Conveyancing was published, are also repealed:—

52 & 53 Vict. c. 7 (Customs and Inland Revenue Act, 1889), ss. 16, 17.

52 & 53 Vict. c. 42 (Revenue Act, 1889), ss. 15 to 17, and 20.

53 & 54 Vict. c. 8 (Customs and Inland Revenue Act, 1890,) ss. 18 to 21.

By the Customs and Inland Revenue Act, 1893 (56 Vict. c. 7), s. 52 of the Stamp Act, 1891, is amended, and s. 82 (2), s. 85, and the paragraphs numbered 5 and 6 under the head "Marketable Security and Foreign and Colonial Share Certificate" in the First Schedule to the same Act and the words "and Foreign and Colonial Share Certificate" are repealed.

Regulations applicable to Instruments generally.

Scope and commencement of Stamp Act, 1891.

Pp. 2 to 35.—The Stamp Act, 1891, which came into operation on the 1st of January, 1892 (see s. 124), is to a great extent merely a consolidating statute, and, accordingly, the previous decisions on points affecting liability of instruments to stamp duty are, for the most part, still applicable.

Instrument not duly stamped inadmissible.

P. 2, *ad fin.*—Sect. 14 of the Act of 1891, sub-s. (4), virtually re-enacts the provisions of s. 17 of the Act of 1870, but provides that instruments not duly stamped shall not be "available for any purpose whatever."

Charge of duties in Schedule.

P. 11, line 21.—Sect. 1 of the Act of 1891 substitutes, as from the commencement of the Act, the duties specified in the 1st Schedule to that Act for the duties theretofore chargeable under the enactments repealed by the Act.

Instruments charged with duty of 35*s.*

P. 11, line 22.—Sect. 120 of the Act of 1891 re-enacts the provisions of s. 4 of the Act of 1870 as to instruments formerly chargeable with a duty of 35*s.*

Instruments relating to Crown property.

P. 11, line 26.—Sect. 119 of the Act of 1891 re-enacts the provisions of s. 5 of the Act of 1870 as to the liability to duty of instruments relating to Crown property and private property of the Sovereign.

How instruments to be written and stamped.

P. 11, line 29.—Sect. 3 of the Act of 1891 is identical with s. 7 of the Act of 1870.

Facts, etc., affecting duty to be set forth.

P. 12, line 21.—Sect. 5 of the Act of 1891 substantially re-enacts s. 10 of the Act of 1870, except that the words "ad valorem" are omitted before the word "duty."

Calculation of duty in certain cases.

Pp. 12, 13.—Sect. 6 of the Act of 1891 consolidates and substantially re-enacts the provisions of ss. 11, 12, and 13 of the Act of 1870.

Marketable securities.

Debentures of a land and cattle company incorporated under the Companies Acts were held to be marketable securities within s. 2 of the Act of 1870, so as to render transfers of sale thereof liable to stamp duty as conveyances on sale under s. 13 of the Customs Act, 1888 (51 & 52 Vict. c. 8): *Texas Land & Cattle Co.* v. *Commrs. of Inland Revenue*, 16 C. of S. Cas. Sc. 69.

Denoting stamps.

P. 13, line 9.—Sect. 11 of the Act of 1891 re-enacts s. 14 of the Act of 1870.

Assessment of duty by Commissioners.

P. 13, line 16.—Sect. 12 of the Act of 1891 consolidates and substantially re-enacts the provisions of ss. 18 and 20 of the Act of 1870.

Sect. 13 of the Act of 1891 substantially re-enacts the provisions of s. 19 of the Act of 1870, except that by the present enactment the costs of appeals are in the discretion of the Court.

Where the registrar of joint stock companies refused to file a contract under s. 25 of the Companies Act, 1867, on the ground that it was not duly stamped, the Court held that the proper remedy was not by mandamus against the registrar, but to proceed by the steps indicated in ss. 18, 19, and 20 of the Act of 1870: *The Queen* v. *Registrar of Joint Stock Companies*, 21 Q. B. D. 131.

Rolls, books, etc., to be open to inspection.

P. 14, line 12.—Sect. 16 of the Act of 1891 substantially re-enacts the provisions of s. 21 of the Act of 1870. The penalty of £10 for enrolling, &c., an instrument not duly stamped is reimposed by s. 17 of the Act of 1891.

How duties are to be denoted.

P. 14, line 22.—Sect. 2 of the Act of 1891 consolidates and substantially re-enacts the provisions of ss. 6 and 23 of the Act of 1870.

P. 14, line 24.—Sect. 10 of the Act of 1891 is identical with s. 9 of the Act of 1870.

P. 14, lines 33, 34.—As to bills payable on demand, and bills and notes drawn or made abroad, see now ss. 34, 35 of of the Act of 1891.

P. 14, lines 35 to 41.—Sects. 12 and 16 of the Customs and Inland Revenue Act, 1888, are repealed: see *ante*, p. 333. As to foreign and colonial share certificates, see ss. 82 to 85 of the Act of 1891, and s. 4 of the Act of 1893; and as to contract notes, see ss. 52, 53 of the same Act, and s. 3 of the Act of 1893, referred to *ante*, p. 333.

Adhesive stamps.

P. 14, *ad fin.*—Sect. 13 of the stat. 45 & 46 Vict. c. 72, is repealed: see *ante*, p. 332. The provisions of this section are re-enacted by s. 7 of the Act of 1891.

Cancellation of adhesive stamps.

Pp. 15, 16.—Sects. 8 and 9 of the Act of 1891 re-enact, with some verbal alterations, the provisions of ss. 24 and 25, sub-ss. (1) and (2) of the Act of 1870, incorporating also the provisions of the repealed s. 14 of the stat. 45 & 46 Vict. c. 72, referred to at p. 16, note (*h*).

Offences relating to stamps.

So much of s. 25 of the Act of 1870 as relates to sub-s. (3) had at the date of the passing of the Stamp Act, 1891, been already repealed by the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), which contains elaborate provisions (see ss. 13 to 20) with regard to offences relating to stamps, ending with a general clause (s. 21) re-enacting the provisions of the repealed enactment.

Use of adhesive stamps.

P. 15, note (*g*).—The Stamp Act, 1891, renders the use of adhesive stamps compulsory only in the case of bills and notes made or drawn abroad (s. 34), contract notes liable to duty of 1*s.* (s. 52, as amended by s. 3 of the Act of 1893). Adhesive stamps are also still required in the case of notices of shipments under the stat. 39 & 40 Vict. c. 36, s. 104.

The use of adhesive stamps is permitted in the case of the following kinds of instruments:—

Agreements liable to duty of 6*d.*: s. 22.

Bills of exchange payable on demand liable to fixed duty of 1*d.*: s. 34.

Charterparties: s. 49.

Contract notes liable to duty of 1*d.*: s. 52.

Copies and extracts (certified) from Registers of Births, &c.: s. 64.

Delivery orders: s. 69.

Leases or tacks for any definite term less than a year of (1) whole or part of a dwelling-house at a rent not exceeding the rate of £10 per annum; and (2) any furnished dwelling-house or apartments; and duplicates or counterparts of such instruments: s. 78.

Letters of renunciation: s. 79.

Notarial acts and protests of bills of exchange and promissory notes: s. 90.

Policies of insurance, except policies of sea and life insurance: s. 99.

Proxies and voting papers: s. 80.

Receipts: s. 101.

Transfers of shares in cost-book mines: s. 110.

Warrants for goods: s. 111.

Stamping after execution.

Pp. 16 to 21.—The provisions of s. 15 of the Act of 1870, as amended by s. 18, sub-s. (2) of the Customs and Inland Revenue Act, 1888, are substantially re-enacted by the Stamp Act, 1891, s. 15, sub-ss. (1), (3), and (4).

Sub-s. (2) of s. 15 of the Act of 1891 is new, and enacts as follows:—

"In the case of such instruments hereinafter mentioned as are chargeable with *ad valorem* duty, the following provisions shall have effect:

(*a.*) The instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper *ad valorem* duty before the expiration of thirty days after it is first executed, or after it has been first received in the United Kingdom in case it is first executed at any place out of the United Kingdom, unless the opinion of the Commissioners with respect to the amount of duty with which the instrument is chargeable, has, before such expiration, been required under the provisions of this Act:

(*b.*) If the opinion of the Commissioners with respect to any such instrument has been required, the instrument shall be stamped in accordance with the assessment of the Commissioners within fourteen days after notice of the assessment:

(*c.*) If any such instrument executed after the sixteenth day of May one thousand eight hundred and eighty-eight has not been or is not duly stamped in conformity with the foregoing provisions of this sub-section, the person in that

behalf hereinafter specified shall incur a fine of ten pounds, and in addition to the penalty payable on stamping the instrument there shall be paid a further penalty equivalent to the stamp duty thereon, unless a reasonable excuse for the delay in stamping, or the omission to stamp, or the insufficiency of stamp, be afforded to the satisfaction of the Commissioners, or of the Court, judge, arbitrator, or referee before whom it is produced:

(*d.*) The instruments and persons to which the provisions of this sub-section are to apply are as follows:—

Title of Instrument as described in the First Schedule to this Act	Person liable to Penalty.
Bond, covenant, or instrument of any kind whatsoever.	The obligee, covenantee, or other person taking the security.
Conveyance on sale	The vendee or transferee.
Lease or tack	The lessee.
Mortgage, bond, debenture, covenant, and warrant of attorney to confess and enter up judgment.	The mortgagee or obligee; in the case of a transfer or reconveyance, the transferee, assignee, or disponee, or the person redeeming the security.
Settlement	The settlor.

Pp. 18 *et seq.*, note (*k*).—The remarks made in this note appear to be for the most part applicable to duties payable under the present Act. The sections of that Act dealing with the different classes of instruments referred to in the note are mentioned below, and alterations in the law are there noted. It must be borne in mind that by s. 15 (2) of the Act (set out *ante*, p. 336), certain instruments liable to ad valorem duty may be stamped without penalty within *thirty* days after execution.

AGREEMENTS.—The remission of penalties is entirely in the discretion of the Commissioners, but their practice is understood to be in accordance with that stated in the note.

APPRAISEMENTS.—See s. 24.

ARTICLES OF CLERKSHIP.—The discretionary power of the Commissioners to remit penalties in the case of these instruments is now entirely taken away: see s. 27.

BILLS OF EXCHANGE, &C.—See s. 37.

BILLS OF LADING.—See s. 40.

CHARTERPARTIES.—See s. 51.

CONTRACT NOTES.—See ss. 52, 53, and s. 3 of the Act of 1893.

Copies or Extracts.—See s. 63.

Delivery Orders.—See ss. 69, 70.

Leases.—Leases liable to ad valorem duty may be stamped without penalty within thirty days after execution: *supra*. As to leases liable to fixed duty, see s. 78.

Letters of Allotment or Renunciation.—See s. 79.

Marketable Securities.—These instruments, as defined by s. 82, are rendered liable to stamp duty. By s. 83, a penalty of £20 is imposed on issuing, &c., foreign and colonial securities; but they may at any time be stamped without penalty on proof that they were not issued, &c., in the United Kingdom: s. 84. The annual duties charged on marketable securities and foreign and colonial securities by s. 85 are now repealed by the Customs and Inland Revenue Act, 1893 (56 Vict. c. 7), s. 4.

Policy of Sea Insurance.—Sect. 95, sub-s. (1), re-enacts the provisions of s. 9 of the stat. 30 & 31 Vict. c. 23, and s. 117 (2) of the Stamp Act, 1870, except that the period within which the instrument may be stamped without penalty is now ten days after it has been first received in the United Kingdom. The provisions of ss. 1, 2, of the stat. 39 & 40 Vict. c. 6, are not re-enacted; but by s. 95, sub-s. (2) of the Act of 1891, it is provided that—

"A policy of sea insurance shall for the purpose of production in evidence be an instrument which may legally be stamped after the execution thereof, and the penalty payable by law on stamping the same shall be the sum of one hundred pounds."

Policy of Insurance (other than Sea Insurance).—See ss. 99, 100.

Proxies, &c.—See s. 80.

Receipts.—See ss. 102, 103.

Scrip Certificates.—See s. 79.

Share Warrants.—See s. 107.

Stock Certificates to Bearer.—These instruments as defined by the Act are now subjected to duty: see s. 108. And by s. 109 it is enacted that,

"(1.) Where the holder of a stock certificate to bearer has been entered on the register of the local authority as the owner of the share of stock described in the certificate, the certificate shall be

forthwith cancelled so as to be incapable of being re-issued to any person.

(2.) Every person by whom a stock certificate to bearer is issued without being duly stamped shall incur a fine of fifty pounds."

TRANSFERS OF SHARES IN COST-BOOK MINES.—The duty may be denoted by adhesive stamps, and a personal penalty of £20 is in every case imposed for executing such instruments not duly stamped: s. 110.

WARRANTS FOR GOODS.—See s. 111.

Production in evidence of instruments not duly stamped.

Pp. 21, 22.—The provisions of s. 16 of the Act of 1870 as amended by s. 44 of the stat. 44 & 45 Vict. c. 12, are re-enacted by s. 14 of the Stamp Act, 1891. As regards policies of sea insurance, see s. 95 (2) of the Act of 1891, set out *ante*, p. 338.

Conditions, &c., in evasion of duty.

P. 22, lines 22 et seq.—The provisions of s. 20 of the Customs and Inland Revenue Act, 1888, are re-enacted by s. 117 of the Stamp Act, 1891.

Instruments to be separately charged in certain cases.

Pp. 27 to 33.—The provisions of s. 8 of the Act of 1870 are substantially re-enacted, with some verbal variation, by s. 4 of the Act of 1891.

The variation does not seem to affect the application under the present law of the decisions cited in these pages.

Marketable and foreign securities, etc.

Pp. 34, 35.—Sects. 2 and 3 of the stat. 34 & 35 Vict. c. 4, and s. 21 of the stat. 48 & 49 Vict. c. 51, and s. 115 of the Act of 1870, are repealed, and in lieu thereof the following enactments of the Act of 1891 are substituted:—

Meaning of marketable securities for charge of duty [and foreign and colonial share certificate: *Now repealed*].

82.—(1.) "Marketable securities for the purpose of the charge of duty thereon include—

(*a.*) A marketable security, made or issued by or on behalf of any company or body of persons corporate or unincorporate formed or established in the United Kingdom; and

(*b.*) A marketable security by or on behalf of any foreign state or government, or foreign or colonial municipal body, corporation, or company (herein-after called a foreign security), bearing date or signed after the third day of June one thousand eight hundred and sixty-two,

(i.) Which is made or issued in the United Kingdom, or

(ii.) Which, though originally issued out of the United Kingdom, has been, after the sixth day of August one thousand eight hundred and eighty-five, or is offered for

subscription, and given or delivered to a subscriber in the United Kingdom, or

(iii.) Which, the interest thereon being payable in the United Kingdom, is assigned, transferred, or in any manner negotiated in the United Kingdom; and

(c.) A marketable security by or on behalf of any colonial government which if the borrower were a foreign government would be a foreign security (hereinafter called a colonial government security).

[(2.) For the purposes of this Act the expression "foreign or colonial share certificate" includes any document whatever, being *primâ facie* evidence of the title of any person as proprietor of, or as having the beneficial interest in, any share or shares or stock or debenture stock or funded debt of any foreign or colonial company or corporation where such person is not registered in respect thereof in a register duly kept in the United Kingdom. *Now repealed* by s. 4 of the Customs and Inland Revenue Act, 1893 (56 Vict. c. 7).]

Penalty on issuing, &c. foreign, &c. security not duly stamped.

83. Every person who in the United Kingdom makes, issues, assigns, transfers, negotiates, or offers for subscription, any foreign security or colonial government security not being duly stamped, shall incur a fine of twenty pounds.

Foreign or colonial securities may be stamped without penalty.

84. The Commissioners may at any time, without reference to the date thereof, allow any foreign security or colonial government security to be stamped without the payment of any penalty, upon being satisfied, in any manner that they may think proper, that it was not made or issued, and has not been transferred, assigned, or negotiated within the United Kingdom.

[Annual duties to be denoted by adhesive stamps. *Now repealed.*]

[85.—(1.) The duties charged upon a marketable security on the occasion of the first transfer by delivery thereof in any year, and upon a foreign or colonial share certificate, on the occasion of the first delivery thereof in any year are to be denoted by adhesive stamps appropriated by words and figures on the face thereof to the duties and the year.

(2.) Every person who delivers or transfers, or is concerned as broker or agent in delivering or transferring, any instrument chargeable with any duty so payable, and not being duly stamped, shall incur a fine of twenty pounds.

(3.) Where the holder of any foreign or colonial share certificate bearing the stamp for any year shall, in the course of the year, cause himself to be registered in the register of the foreign or colonial company or corporation to which it relates, and shall obtain a new certificate consequent upon the registration, the Commissioners may, subject to such regulations as they may prescribe, stamp the new certificate for the same year without payment of duty. *Now repealed* by s. 4 of the Act of 1893, *supra*.]"

Sects. 112 and 113 of the Stamp Act, 1891, contain the

following provisions imposing stamp duties on the capital of companies. Duty on capital of companies.

These sections substantially re-enact the provisions of s. 11 of the Customs and Inland Revenue Act, 1888, and s. 17 of the Customs and Inland Revenue Act, 1889.

112. "A statement of the amount which is to form the nominal share capital of any company to be registered with limited liability shall be delivered to the registrar of joint stock companies in England, Scotland, or Ireland, and a statement of the amount of any increase of registered capital of any company now registered or to be registered with limited liability shall be delivered to the said registrar, and every such statement shall be charged with an *ad valorem* stamp duty of two shillings for every one hundred pounds and any fraction of one hundred pounds over any multiple of one hundred pounds of the amount of such capital or increase of capital as the case may be. Charge of duty on capital of limited liability companies.

113.—(1.) Where by virtue of any letters patent granted by Her Majesty, or any Act, the liability of the holders of shares in the capital of any corporation or company is limited otherwise than by registration with limited liability under the law in that behalf, a statement of the amount of nominal share capital of the corporation or company shall be delivered by the corporation or company to the Commissioners within one month after the date of the letters patent or the passing of the Act; and in case of any increase of the amount of nominal share capital of any corporation or company, whether now existing or to be hereafter formed, being authorised by any letters patent or Act, a statement of the amount of such increase shall be delivered by the corporation or company to the Commissioners within the like period. Charge of duty on capital of companies with limited liability otherwise than under the Companies Acts.

(2.) The statement shall be charged with an *ad valorem* stamp duty of two shillings for every one hundred pounds and any fraction of one hundred pounds over any multiple of one hundred pounds of the amount of such capital or increase of capital as the case may be, and shall be duly stamped accordingly when the same is delivered to the Commissioners.

(3.) In the case of neglect to deliver such a statement as is hereby required to be delivered, the corporation or company shall be liable to pay to Her Majesty a sum equal to ten pounds per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect shall continue."

Sects. 114, 115, and 116, respectively allow of compositions for stamp duty in the cases of transfers of Canadian and Colonial Stocks, stocks and funded debts of county councils, corporations, and companies, and policies of insurance against Composition for duties in certain cases.

accident. Compare ss. 53 and 54 of the Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), and s. 20 of the Revenue Act, 1889 (52 & 53 Vict. c. 42).

Regulations applicable to Particular Instruments.

Agreements.

Pp. 35 to 47.—The Stamp Act, 1891, enacts as follows:—

Duty may be denoted by adhesive stamp.

22. "The duty of sixpence upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed.

Certain mortgages of stock to be chargeable as agreements.

23.—(1.) Every instrument under hand only (not being a promissory note or bill of exchange) given upon the occasion of the deposit of any share warrant or stock certificate to bearer, or foreign or colonial share certificate, or any security for money transferable by delivery, by way of security for any loan, shall be deemed to be an agreement, and shall be charged with duty accordingly.

(2.) Every instrument under hand only (not being a promissory note or bill of exchange) making redeemable or qualifying a duly stamped transfer, intended as a security, of any registered stock or marketable security, shall be deemed to be an agreement, and shall be charged with duty accordingly.

(3.) A release or discharge of any such instrument shall not be chargeable with any *ad valorem* duty."

The decisions as to liability to and exemption from stamp duty cited in these pages appear to be still applicable.

For duties, see Table of Stamp Duties, *post*.

Appraisements and Awards.

Definition of "appraisement."

Pp. 47, 48.—The definition of appraisement in s. 4 of the stat. 46 Geo. III., c. 43, appears to be still in force for the purposes of stamp duty, and the provisions of s. 38 of the Act of 1870 requiring appraisements to be written out on duly stamped material within 14 days after the making thereof are re-enacted by s. 24 of the Stamp Act, 1891.

For duties, see Table of Stamp Duties, *post*.

Apprenticeship and Articles of Clerkship.

Instruments of apprenticeship.

Pp. 48 to 50.—Sect. 40 of the Stamp Act, 1870, is repealed and not re-enacted. A uniform duty of 2*s.* 6*d.* is imposed on all instruments of apprenticeship except articles of clerkship and certain specially exempted instruments, whether a premium is paid or not, see s. 25 of the Stamp Act, 1891, and Table of Stamp Duties, *post*.

Articles of clerkship.

For special provisions relating to articles of clerkship, see ss. 26 to 28 of the Stamp Act, 1891, and for duties, see Table of Stamp Duties, *post*.

Bills of Exchange and Promissory Notes.

Definitions.

P. 56.—The definitions of "bill of exchange" and "promissory note," respectively given in ss. 48 and 49 of the Stamp Act, 1870, are re-enacted by ss. 32 and 33 of the Stamp Act, 1891.

Evidence.

A promissory note insufficiently stamped is not admissible in evidence to prove the receipt of the money for which the note was given: *Ashling* v. *Boon*, [1891] 1 Ch. 568.

Agreement stamp, when required.

A document containing other stipulations besides a promise to pay must be stamped as an agreement, not as a promissory note: *Mortgage Insurance Corporation* v. *Commissioners of Inland Revenue*, 21 Q. B. D. 352, C. A.

The mere insertion of a clause giving time does not of itself constitute the document an agreement for purposes of stamp duty: *Yates* v. *Evans*, 66 L. T. 532, 61 L. J. Q. B. 446.

Pp. 59 to 61.—The provisions of ss. 51 to 55 of the Stamp Act, 1870, here set out, are substantially re-enacted by s. 34 (2) and ss. 35 to 39 of the Stamp Act, 1891.

For duties on bills and notes, see Table of Stamp Duties, *post*.

Bonds.

Pp. 62 to 64.—For duties, see Table of Stamp Duties, *post*.

P. 65.—Sect. 25 of the stat. 3 & 4 Vict. c. 96, and the stat. 33 & 34 Vict. c. 93, are repealed by the Stamp Duties Management Act, 1891.

Conveyance on Sale.

The liability of conveyances on sale to stamp duty is now regulated by ss. 54 to 61 of the Stamp Act, 1891, which substantially re-enact the provisions of ss. 70 to 78 of the Stamp Act, 1870, but by s. 59 of the Stamp Act, 1891, it is enacted as follows:—

Certain contracts to be chargeable as conveyances on sale.

59.—(1.) Any contract or agreement made in England or Ireland under seal, or under hand only, or made in Scotland, with or without any clause of registration, for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except lands, tenements, hereditaments, or heritages, or property locally situate out of the United Kingdom, or goods, wares or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share, or property of or in any ship or vessel, shall be charged with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest, or property contracted or agreed to be sold.

(2.) Where the purchaser has paid the said *ad valorem* duty and before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the *ad valorem* duty payable in respect of such excess consideration, and in any other case with the fixed duty of ten shillings or of sixpence, as the case may require.

(3.) Where duty has been duly paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and the Commissioners, upon application, either shall denote the payment of the *ad valorem* duty upon the conveyance or transfer, or shall transfer the *ad valorem* duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped.

(4.) Provided that where any such contract or agreement is stamped with the fixed duty of ten shillings or of sixpence, as the case may require, the contract or agreement shall be regarded as duly stamped for the mere purpose of proceedings to enforce specific performance or recover damages for the breach thereof.

(5.) Provided also that where any such contract or agreement

is stamped with the said fixed duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to the Commissioners for stamping with the *ad valorem* duty chargeable thereon within the period of six months after the first execution of the contract or agreement, or within such longer period as the Commissioners may think reasonable in the circumstances of the case, the conveyance or transfer shall be stamped accordingly, and the same, and the said contract or agreement, shall be deemed to be duly stamped. Nothing in this proviso shall alter or affect the provisions as to the stamping of a conveyance or transfer after the execution thereof.

(6.) Provided also, that the *ad valorem* duty paid upon any such contract or agreement shall be returned by the Commissioners in case the contract or agreement be afterwards rescinded or annulled, or for any other reason be not substantially performed or carried into effect, so as to operate as or be followed by a conveyance or transfer.

Assignment of life-policy.

P. 68, line 24.—By s. 118 of the Stamp Act, 1891, it is expressly provided that every assignment of a policy of life assurance must be stamped before the money assured can be recovered by or paid to the assignee. This section re-enacts the provisions of s. 19 of the Customs and Inland Revenue Act, 1888, set out Vol. VII., p. 110, note (*l*).

Compulsory purchases.

P. 69, line 1.—*Inland Revenue Commrs.* v. *Glasgow & S. W. Rail. Co.* is now reported 12 App. Cas. 315.

Contracts.

P. 69, lines 16 *et seq.*—Early in 1889 it was decided by the Divisional Court that an agreement for the sale of a goodwill of a business, the effect of which in equity was equivalent to an assignment, was not within s. 70 of the Stamp Act, 1870, and was therefore not liable to *ad valorem* duty under that Act; and this decision was affirmed by the Court of Appeal: *Commrs. of Inland Revenue* v. *Angus*, 23 Q. B. D. 579.

Accordingly a clause (s. 18) was inserted in the Customs and Inland Revenue Act, 1889 (52 Vict. c. 7), which passed and came into operation on the 31st of May in that year, intended to meet such cases. But this clause was repealed and re-enacted in an amplified form by s. 15 of the Revenue Act, 1889 (52 & 53 Vict. c. 42), which came into operation on the 26th of August, 1889.

This section is now repealed, but re-enacted by s. 59 of the Stamp Act, 1891, set out *supra*.

P. 75, line 10.—For "10 Geo. IV., c. 50," read "30 & 31 Vict. c. 101."

For duties on conveyances, see Table of Stamp Duties, *post*.

Copies and Extracts.

Pp. 75, 76.—For duties, see Table of Stamp Duties, *post*.

Copyholds.

Pp. 77, 78.—The provisions of ss. 81 to 86 of the Stamp Act, 1870, are substantially re-enacted by ss. 65 to 68 of the Stamp Act, 1891. The period within which the steward is to make out duly stamped copies of court-rolls is *four* months.

Leases.

Pp. 78 to 80.—The provisions of ss. 93 and 96 to 100 of the Stamp Act, 1870, are re-enacted by ss. 72 and 75 to 78 of the Stamp Act, 1891; but s. 77 contains the following new enactment:—

Additional rent.

"(5.) An instrument whereby the rent reserved by any other instrument chargeable with duty and duly stamped as a lease or tack is increased is not to be charged with duty otherwise than as a lease or tack in consideration of the additional rent thereby made payable."

Separate rents.

Where two distinct rents are reserved, one for a house and land, and the other for furniture, the instrument must be stamped in respect of both rents, in the following manner, *i.e.*, with *ad valorem* duty in respect of the rent of the land, and ten shillings in respect of the rent of the furniture. The statement of the rule in Vol. III., p. 340 (see also Vol. III., p. 475, note (*h*)), is not sufficiently explicit.

For duties on leases, see Table of Stamp Duties, *post*.
As to stamping leases after execution, see *ante*, p. 338.

Mortgages.

Pp. 82 to 93.—Sects. 86 to 89 of the Stamp Act, 1891, reproduce the provisions of ss. 105 to 111, set out in Vol. III., pp. 988 to 990, but with the following variations and additions.

Equitable mortgages.

Agreements chargeable with duty as equitable mortgages are excluded from the general definition of "mortgage" for the purposes of the Act of 1891, and by the First Schedule to the Act equitable mortgages are specially charged with duty at the rate therein mentioned.

By s. 86, sub-s. (2) of the Act, it is enacted that—

> "For the purpose of this Act the expression 'equitable mortgage' means an agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatever (other than stock or marketable security), or creating a charge on such property."

Copyholds.

By s. 110, sub-s. (ii.), where copyholds or customary lands are mortgaged with other property, the *ad valorem* duty is, as heretofore, to be charged on the instrument relating to the other property, but the surrender or grant, or memorandum or copy of court-roll "is not to be charged with any higher duty than ten shillings."

Future advances.

Sect. 88, sub-s. (2), enacts, with regard to securities for future advances, where the total amount secured or to be ultimately recoverable is unlimited, as follows:—

> "Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty the security shall for the purpose of stamp duty be deemed to be a new and separate instrument, bearing date on the day on which the advance or loan is made."

For duties on mortgages and transfers, and reconveyances thereof, see Table of Stamp Duties, *post*.

Receipts.

Pp. 93 to 96.—Sects. 101 to 103 of the Stamp Act, 1891, re-enact the provisions of ss. 120 to 123 of the Stamp Act, 1870. For duty, see Table of Stamp Duties, *post*.

Release or Renunciation.

P. 97, lines 1 *et seq.*—For duties, see Table of Stamp Duties, *post*.

Schedule.

Pp. 97 to 99.—The First Schedule to the Stamp Act, 1891, does not impose any duty on schedules, inventories, or documents referred to, &c., in other instruments.

Settlement.

Pp. 99, 100.—Sects. 104 to 106 of the Stamp Act, 1891, re-enact the provisions of ss. 124 to 126 of the Stamp Act, 1870, with some verbal alterations, which do not appear to introduce any material alterations in the law.

For duties on Settlements, see Table of Stamp Duties, *post*.

Contingent interest.

A settlement of a contingent reversionary interest in a sum of stock was held to be liable under the Stamp Act, 1870, to stamp duty on the amount of the full value of the stock according to the average price on the day of the date of the instrument: *Onslow* v. *Inland Revenue Commrs.*, [1891] 1 Q. B. 239, C. A.

Present Stamp Duties.

The following Table shows the Stamp Duties now payable in the United Kingdom:—

Stamp Duties on Instruments.

	Duty. £	s.	d.
Admission in England of any person—			
To the degree of barrister-at-law.			
If he has been previously duly admitted to the said degree in Ireland	10	0	0
In any other case	50	0	0
Exemption.			
Admission of any person who has been previously duly admitted as an advocate in Scotland.			
And see sections 18, 19, and 20.			
Admission in Ireland of any person—			
To the degree of barrister-at-law.			
If he has been previously duly admitted to the said degree in England, or as an advocate in Scotland	10	0	0
In any other case	50	0	0
And see sections 18, 19, 20.			
Admission in Scotland of any person—			
As an advocate.			
If he has been previously duly admitted to the degree of barrister-at-law in Ireland .	10	0	0
In any other case	50	0	0
Exemption.			
Admission of any person who has been previously duly admitted to the degree of barrister-at-law in England.			
And see sections, 18, 19, 20.			
Admission of any person—			
To be a member of either of the four Inns of Court in England, or a student of the Society of King's Inns in Dublin	25	0	0
Exemptions.			
(1.) Admission of any person who has been previously duly admitted a member of			

	Duty. £	s.	d.
one of the Inns of Court in England, to be a member of any other of the said Inns.			
(2.) Admission of any person who has been previously duly admitted a student of the Society of King's Inns in Dublin, to be a member of any of the Inns of Court in England.			
And see sections 18, 19, 20, and 21			
ADMISSION of any person—			
As a solicitor of the Supreme Court in England, or of the Court of Judicature in Ireland .	25	0	0
And see sections 18 and 19.			
ADMISSION in Scotland of any person—			
(1.) As a law agent to practise before the Court of Session or as a writer to the signet:			
If he has previously paid the sum of 60*l.* for duty upon his articles of clerkship	25	0	0
If he has been previously duly admitted as a law agent to practise before a sheriff court . . .	30	0	0
In any other case	85	0	0
(2.) As a law agent to practise before a sheriff court;			
If he has previously paid the sum of 2*s.* 6*d.* for duty on his articles of clerkship	54	17	6
In any other case	55	0	0
Exemption.			
Admission of any person who has been previously duly admitted as a law agent to practise before the Court of Session or as a writer to the signet to act in the other of those capacities.			
And see sections 18 and 19.			
ADMISSION to act as a notary public. See "*Faculty.*"			
ADMISSION of any person—			
As a Fellow of the College of Physicians in England, Scotland, or Ireland . . .	25	0	0
And see sections 18 and 19.			
ADMISSION of any person to the degree of doctor of medicine in either of the Universities in Scotland.	10	0	0
And see sections 18 and 19.			

	Duty. £	s.	d.
ADMISSION in England or Ireland of any person—			
As a burgess, or into any corporation or company, in any city, borough, or town corporate.			
In respect of birth, apprenticeship, or marriage, or, in Ireland, in respect of being engaged in any trade, mystery, or handicraft	1	0	0
Upon any other ground	3	0	0
Exemptions.			
(1.) Admission of any person to the freedom of the city of London by redemption.			
(2.) Admission of any person to the freedom of the company of watermen and lightermen of the River Thames.			
And see sections 18 and 19.			
ADMISSION in Scotland of any person—			
As a burgess, or into any corporation or company, in any burgh	0	5	0
Exemption.			
Admission of a craftsman or other person into any corporation within any royal burgh, burgh of royalty, or burgh of barony incorporated by the magistrates and council of such burgh, provided such craftsman or other person has been previously duly admitted a freeman or burgess of the burgh.			
And see sections 18 and 19.			
AFFIDAVIT and STATUTORY DECLARATION . .	0	2	6
Exemptions.			
(1.) Affidavit made for the immediate purpose of being filed, read, or used in any court or before any judge, master, or officer of any court.			
(2.) Affidavit or declaration made upon a requisition of the commissioners of any public board of revenue, or any of the officers acting under them, or required by law, and made before a justice of the peace.			
(3.) Affidavit or declaration which may be required at the Bank of England or the Bank of Ireland to prove the death of any proprietor of any stock transferable there, or to identify the person of any such proprietor, or to remove any other impediment to the transfer of any such stock.			

	Duty. £	s.	d.
(4.) Affidavit or declaration relating to the loss, mutilation, or defacement of any bank note or bank post bill.			
(5.) Declaration required to be made pursuant to any Act relating to marriages in order to a marriage without licence.			
(6.) Declaration forming part of an application for a patent in conformity with the Patents, Designs, and Trade Marks Act, 1883.			
AGREEMENT or CONTRACT, accompanied with a deposit. See "*Mortgage*," &c., and sections 23 and 86.			
AGREEMENT for a lease or tack, or for any letting. See "*Lease*" or "*Tack*," and section 75.			
AGREEMENT for sale of property. See "*Conveyance on Sale*," and section 59.			
AGREEMENT or CONTRACT made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways .	0	0	6
AGREEMENT or any MEMORANDUM of an AGREEMENT, made in England or Ireland under hand only, or made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument	0	0	6

Exemptions.

(1.) Agreement or memorandum the matter whereof is not of the value of 5*l.*

(2.) Agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant.

(3.) Agreement, letter, or memorandum made for or relating to the sale of any goods wares, or merchandise.

(4.) Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.

(5.) Agreement entered into between a landlord and tenant pursuant to sub-section six of section eight or sub-section two

	Duty. £ s. d.
of section twenty of the Land Law (Ireland) Act, 1881. And see sections 22 and 23.	
ALLOTMENT. See "*Letter of Allotment.*"	
ANNUITY, conveyance in consideration of. See "*Conveyance on Sale,*" and section 56.	
purchase of. See "*Conveyance on Sale,*" and section 60.	
creation of, by way of security. See "*Mortgage,*" &c., and section 87.	
instruments relating to, upon any other occasion. See "*Bond, Covenant,*" &c.	
APPOINTMENT of a new trustee, and APPOINTMENT in execution of a power of any property, or of any use, share, or interest in any property, by any instrument not being a will . . . . . And see section 62.	0 10 0
APPOINTMENT of a gamekeeper. See "*Deputation.*"	
APPRAISEMENT or VALUATION of any property, or of any interest therein, or of the annual value thereof, or of any dilapidations, or of any repairs wanted, or of the materials and labour used or to be used in any building, or of any artificer's work whatsoever.	
Where the amount of the appraisement or valuation does not exceed 5*l.*	0 0 3
Exceeds 5*l.* and does not exceed 10*l.* . .	0 0 6
„ 10*l.* „ 20*l.* . . .	0 1 0
„ 20*l.* „ 30*l.* . .	0 1 6
„ 30*l.* „ 40*l.* . . .	0 2 0
„ 40*l.* „ 50*l.* . .	0 2 6
„ 50*l.* „ 100*l.* . . .	0 5 0
„ 100*l.* „ 200*l.* . .	0 10 0
„ 200*l.* „ 500*l.* . . .	0 15 0
„ 500*l.*	1 0 0
Exemptions.	
(1.) Appraisement or valuation made for, and for the information of, one party only, and not being in any manner obligatory as between parties either by agreement or operation of law.	
(2.) Appraisement or valuation made in pursuance of the order of any Court of Admiralty, or of any Court of Appeal,	

	Duty. £ s. d.
from a judgment of any Court of Admiralty.	
(3.) Appraisement or valuation of property of a deceased person made for the information of an executor or other person required to deliver, in England or Ireland, an affidavit, or to record in any commissary court in Scotland an inventory of the estate of such deceased person.	
(4.) Appraisement or valuation of any property made for the purpose of ascertaining the legacy or succession or account duty payable in respect thereof.	
And see section 24.	
APPRENTICESHIP, instrument of	0 2 6
Exemptions.	
(1.) Instrument relating to any poor child apprenticed by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, or pursuant to any Act for the regulation of parish apprentices.	
(2.) Instrument of apprenticeship in Ireland, where the value of the premium or consideration does not exceed 10*l.*	
And see section 25.	
ARTICLES OF CLERKSHIP whereby any person first becomes bound to serve as a clerk in order to his admission,	
(1.) As a solicitor of the Supreme Court in England or of the Court of Judicature in Ireland	80 0 0
(2.) As a law agent to practise before the Court of Session or as writer to the Signet in Scotland	60 0 0
(3.) As a law agent to practise before a sheriff court in Scotland	0 2 6
And see sections 26, 27, and 28.	
ARTICLES OF CLERKSHIP whereby any person, having been bound by previous duly stamped articles to serve as a clerk in order to his admission in any of the Courts aforesaid, and not having completed his service so as to be entitled to such admission, becomes bound afresh for the same purpose.	

	Duty. £	s.	d.
Where the duty upon the previous articles was 2s. 6d.	0	2	6
In any other case	0	10	0

ASSIGNMENT or ASSIGNATION.

By way of security, or of any security. See "*Mortgage*," &c.

Upon a sale, or otherwise. See "*Conveyance*."

ASSURANCE. See "*Policy*."

ATTESTED COPY. See "*Copy*."

ATTORNEY, LETTER or POWER of. See "*Letter of Attorney*."

WARRANT of. See "*Warrant of Attorney*."

AWARD in England or Ireland, and AWARD or DECREET ARBITRAL in Scotland.

In any case in which an amount or value is the matter in dispute—

Where no amount is awarded or the amount or value awarded does not exceed 5*l*.	0	0	3
Where the amount or value awarded—			
Exceeds 5*l*. and does not exceed 10*l*.	0	0	6
„ 10*l*. „ 20*l*.	0	1	0
„ 20*l*. „ 30*l*.	0	1	6
„ 30*l*. „ 40*l*.	0	2	0
„ 40*l*. „ 50*l*.	0	2	6
„ 50*l*. „ 100*l*.	0	5	0
„ 100*l*. „ 200*l*.	0	10	0
„ 200*l*. „ 500*l*.	0	15	0
„ 500*l*. „ 750*l*.	1	0	0
„ 750*l*. „ 1,000*l*.	1	5	0
„ 1,000*l*.	1	15	0
In any other case	1	15	0

BACK BOND or BACK LETTER. See "*Mortgage*," &c., and sections 23 and 86.

BANK NOTE—

For money not exceeding 1*l*.	0	0	5
Exceeding 1*l*. and not exceeding 2*l*.	0	0	10
„ 2*l*. „ 5*l*.	0	1	3
„ 5*l*. „ 10*l*.	0	1	9
„ 10*l*. „ 20*l*.	0	2	0
„ 20*l*. „ 30*l*.	0	3	0
„ 30*l*. „ 50*l*.	0	5	0
„ 50*l*. „ 100*l*.	0	8	6

And see sections 29, 30, and 31.

	Duty. s.	d.
BILL OF EXCHANGE—		
Payable on demand or at sight or on presentation	0	0 1
And see sections 32, 34, and 38.		
BILL OF EXCHANGE of any other kind whatsoever (*except a Bank Note*) and PROMISSORY NOTE of any kind whatsoever (*except a Bank Note*)—drawn, or expressed to be payable, or actually paid, or endorsed, or in any manner negotiated in the United Kingdom.		
Where the amount or value of the money for which the bill or note is drawn or made does not exceed 5*l.*	0	0 1
Exceeds 5*l.* and does not exceed 10*l.* . . .	0	0 2
„ 10*l.* „ 25*l.* . . .	0	0 3
„ 25*l.* „ 50*l.* . . .	0	0 6
„ 50*l.* „ 75*l.* . . .	0	0 9
„ 75*l.* „ 100*l.* . . .	0	1 0
„ 100*l.*— for every 100*l.*, and also for any fractional part of 100*l.*, of such amount or value .	0	1 0

Exemptions.

(1.) Bill or note issued by the Bank of England or the Bank of Ireland.

(2.) Draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.

(3.) Letter written by a banker in the United Kingdom, to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.

(4.) Letter of credit granted in the United Kingdom, authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom.

(5.) Draft or order drawn by the Paymaster-General on behalf of the Court of Chancery in England or by the Accountant-General of the Supreme Court of Judicature in Ireland.

	Duty. £ s. d.
(6.) Warrant or order for the payment of any annuity granted by the National Debt Commissioners, or for the payment of any dividend or interest on any share in the Government or Parliamentary stocks or funds.	
(7.) Bill drawn by any person under the authority of the Admiralty, upon and payable by the Accountant General of the Navy.	
(8.) Bill drawn (according to a form prescribed by Her Majesty's Orders by any person duly authorised to draw the same) upon and payable out of any public account for any pay or allowance of the army or auxiliary forces or for any other expenditure connected therewith.	
(9.) Draft or order drawn upon any banker in the United Kingdom by an officer of a public department of the State for the payment of money out of a public account.	
(10.) Bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue.	
(11.) Coupon or warrant for interest attached to and issued with any security, or with an agreement or memorandum for the renewal or extension of time for payment of a security.	
And see sections 32, 33, 34, 35, 36, 37, 38, and 39.	
BILL OF LADING of or for any goods, merchandise, or effects to be exported or carried coastwise	0 0 6
And see section 40.	
BILL OF SALE—	
Absolute. See "*Conveyance on Sale.*"	
By way of security. See "*Mortgage,*" &c.	
And see section 41.	
BOND for securing the payment or repayment of money or the transfer or retransfer of stock.	
See "*Mortgage,*" &c., and "*Marketable Security.*"	
BOND in relation to any annuity upon the original creation and sale thereof.	
See "*Conveyance on Sale,*" and section 60.	

	Duty. £ s. d.
BOND, COVENANT, or INSTRUMENT of any kind whatsoever.	
(1.) Being the only or principal or primary security for any annuity (*except upon the original creation thereof by way of sale or security, and except a superannuation annuity*), or for any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.	
For a definite and certain period, so that the total amount to be ultimately payable can be ascertained.	The same ad valorem duty as a bond or covenant for such total amount.
For the term of life or any other indefinite period.	
For every 5*l.*, and also for any fractional part of 5*l.*, of the annuity or sum periodically payable . .	£ s. d. 0 2 6
(2.) Being a collateral or auxiliary or additional or substituted security for any of the above mentioned purposes where the principal or primary instrument is duly stamped.	
Where the total amount to be ultimately payable can be ascertained.	The same ad valorem duty as a bond or covenant of the same kind for such total amount.
In any other case:	
For every 5*l.*, and also for any fractional part of 5*l.*, of the annuity or sum periodically payable	£ s. d. 0 0 6
(3.) Being a grant or contract for payment of a superannuation annuity, that is to say a deferred life annuity granted or secured to any person in consideration of annual premiums payable until he attains a specified age and so as to commence on his attaining that age.	
For every 5*l.* and also for any fractional part of 5*l.* of the annuity .	0 0 6
BOND given pursuant to the directions of any Act, or of the Commissioners or the Commissioners of Customs, or any of their officers, for or in respect of any of the duties of excise or customs, or for preventing	

Duty.
£ s. d.

frauds or evasions thereof, or for any other matter or thing relating thereto.

Where the penalty of the bond does not exceed 150*l.* — The same ad valorem duty as a bond for the amount of the penalty.

£ s. d.

In any other case 0 5 0

Exemption.

Bond given as aforesaid upon, or in relation to, the receiving or obtaining, or for entitling any person to receive or obtain, any drawback of any duty of excise or customs, for or in respect of any goods, wares, or merchandise exported or shipped to be exported from the United Kingdom to any parts beyond the seas, or upon or in relation to the obtaining of any debenture or certificate for entitling any person to receive any such drawback as aforesaid.

And see section 42.

Bond on obtaining letters of administration in England or Ireland, or a confirmation of testament in Scotland 0 5 0

Exemptions.

(1.) Bond given by the widow, child, father, mother, brother or sister, of any common seaman, marine or soldier, dying in the service of Her Majesty.

(2.) Bond given by any person where the estate to be administered does not exceed 100*l.* in value.

Bond of any kind whatsoever not specifically charged with any duty:

Where the amount limited to be recoverable does not exceed 300*l.* . . . . — The same ad valorem duty as a bond for the amount limited.

£ s. d.

In any other case 0 10 0

Bond, accompanied with a deposit of title deeds, for making a mortgage, wadset, or other security on any estate or property therein comprised.

See "*Mortgage*," &c., and section 86.

Bond, Declaration, or other Deed or Writing for making redeemable any disposition, assignation, or tack, apparently absolute, but intended only as a security.

See "*Mortgage*," &c., and sections 23 and 86.

	Duty. £ s. d.
CERTIFICATE to be taken out yearly— (1.) By every person admitted or inrolled in England or Ireland as a solicitor, or in Scotland as a law agent or writer to the Signet, or in any part of the United Kingdom as a notary public. (2.) By every other legally qualified person who carries on business in England or Ireland as a conveyancer, special pleader, or draftsman in equity, and is obliged by law to take out such a certificate.	

If such person practises or carries on his business	If he has been admitted or inrolled, or has carried on business, for three years or upwards. £ s. d.	If he has not been so long admitted or inrolled, or has not so long carried on business. £ s. d.
In England, within ten miles from the General Post Office in the City of London . . .	9 0 0	4 10 0
In Scotland, within the city or shire of Edinburgh . . .		
In Ireland, in the city of Dublin, or within three miles therefrom.		
In England, Scotland, or Ireland, beyond the above-mentioned limits	6 0 0	3 0 0
And see sections 43, 44, 45, 46, 47, and 48.		

	£ s. d.
CERTIFICATE of any goods, wares, or merchandise, having been duly entered inwards, which shall be entered outwards for exportation at the port of importation, or be removed from thence to any other port for the more convenient exportation thereof, where such certificate is issued for enabling a person to obtain a debenture or certificate entitling him to receive a drawback of any duty of customs	0 4 0
CHARTER of resignation, or of confirmation, or of novodamus, or upon apprising, or upon a decreet of adjudication, or sale of any lands, or other heritable subjects in Scotland	0 5 0

	Duty. £	s.	d.
CHARTER-PARTY	0	0	6
And see sections 49, 50, and 51.			
CHEQUE. See "*Bill of Exchange.*"			
CLARE CONSTAT. See "*Precept and Writ.*"			
COLONIAL SECURITY. See "*Marketable Security,*" and section 82.			
COMMISSION :			
(1.) To any officer in the army, or in the corps of Royal Marines	1	10	0
(2.) To any officer in the navy . . .	0	5	0
Exemption.			
Commission to any officer of militia, yeomanry, or volunteers.			
COMMISSION OF LUNACY	0	5	0
COMMISSION to act as a notary public in Scotland. See "*Faculty.*"			
COMMISSION in the nature of a power of attorney in Scotland. See "*Letter or Power of Attorney.*"			
CONDITIONAL SURRENDER of any copyhold or customary estate by way of mortgage. See "*Mortgage,*" &c., and sections 86 and 87.			
CONGÉ D'ÉLIRE. See "*Grant.*"			
CONSTAT of Letters Patent. See "*Exemplification.*"			
CONTRACT. See "*Agreement.*"			
CONTRACT NOTE for or relating to the sale or purchase of any stock or marketable security—			
Of the value of 5*l.* and under the value of 100*l.*	0	0	1
„ 100*l.* or upwards . . .	0	1	0
And see sections 52 and 53, and see section 3 of the Customs and Inland Revenue Act, 1893 (56 Vict. c. 7).			
CONVEYANCE or TRANSFER, whether on sale or otherwise :—			
(1.) Of any stock of the Bank of England . .	0	7	9
(2.) Of any stock of the Government of Canada inscribed in books kept in the United Kingdom, or of any Colonial stock to which the Colonial Stock Act, 1877, applies—			
For every 100*l.*, and also for any fractional part of 100*l.*, of the nominal amount of stock transferred .	0	2	6
And see section 62.			

	Duty. £	s.	d.
CONVEYANCE or TRANSFER on sale,			
Of any property (*except such stock as aforesaid*),			
Where the amount or value of the consideration for the sale does not exceed 5*l.*	0	0	6
Exceeds 5*l.*, and does not exceed 10*l.*	0	1	0
„ 10*l.* „ 15*l.*	0	1	6
„ 15*l.* „ 20*l.*	0	2	0
„ 20*l.* „ 25*l.*	0	2	6
„ 25*l.* „ 50*l.*	0	5	0
„ 50*l.* „ 75*l.*	0	7	6
„ 75*l.* „ 100*l.*	0	10	0
„ 100*l.* „ 125*l.*	0	12	6
„ 125*l.* „ 150*l.*	0	15	0
„ 150*l.* „ 175*l.*	0	17	6
„ 175*l.* „ 200*l.*	1	0	0
„ 200*l.* „ 225*l.*	1	2	6
„ 225*l.* „ 250*l.*	1	5	0
„ 250*l.* „ 275*l.*	1	7	6
„ 275*l.* „ 300*l.*	1	10	0
„ 300*l.*			
For every 50*l.*, and also for any fractional part of 50*l.*, of such amount or value	0	5	0
And see sections 54, 55, 56, 57, 58, 59, 60, and 61.			
CONVEYANCE or TRANSFER by way of security of any property (*except such stock as aforesaid*), or of any security.			
See "*Mortgage*," &c., and "*Marketable Security.*"			
CONVEYANCE or TRANSFER of any kind not hereinbefore described	0	10	0
And see section 62.			
COPY or EXTRACT (*attested or in any manner authenticated*) of or from—			
(1.) An instrument chargeable with any duty.			
(2.) An original will, testament, or codicil.			
(3.) The probate or probate copy of a will or codicil.			
(4.) Any letters of administration or any confirmation of a testament.			
(5.) Any public register (*except any register of births, baptisms, marriages, deaths, or burials*).			
6.) The books, rolls, or records of any court			

	Duty. £ s. d.
In the case of an instrument chargeable with duty not amounting to one shilling	The same duty as such instrument.
In any other case	0 1 0

Exemptions.

(1.) Copy or extract of or from any law proceeding.

(2.) Copy or extract in Scotland of or from the commission of any person as a delegate or representative to the convention of royal burghs or the general assembly or any presbytery or church court.

And see section 63.

COPY or EXTRACT (*certified*) of or from any register of births, baptisms, marriages, deaths, or burials . 0 0 1

Exemptions.

(1.) Copy or extract furnished by any clergyman, registrar, or other official person pursuant to and for the purposes of any Act, or furnished to any general or superintending registrar under any general regulation.

(2.) Copy or extract for which the person giving the same is not entitled to any fee or reward.

And see section 64.

COPYHOLD and CUSTOMARY ESTATES—Instruments relating thereto.

Upon a sale thereof. See "*Conveyance on Sale.*"

Upon a mortgage thereof. See "*Mortgage,*" &c.

Upon a demise thereof. See "*Lease or Tack.*"

Upon any other occasion.

Surrender or grant made out of court, or the memorandum thereof,

and copy of court roll of any surrender or grant made in court . . . 0 10 0

And see sections 65, 66, 67, and 68.

COST BOOK MINES. See "*Transfer.*"

COUNTERPART. See "*Duplicate.*"

COVENANT for securing the payment or repayment of money, or the transfer or retransfer of stock.

See "*Mortgage,*" &c.

COVENANT in relation to any annuity upon the original creation and sale thereof.

See "*Conveyance on Sale,*" and section 60.

	Duty. £ s. d.
COVENANT in relation to any annuity (*except upon the original creation and sale thereof*) or to other periodical payments. See "*Bond, Covenant*," &c.	
COVENANT. Any separate deed of covenant (*not being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage*) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid.	
Where the ad valorem duty in respect of the consideration or mortgage money does not exceed 10*s.*	A duty equal to the amount of such ad valorem duty.
	£ s. d.
In any other case	0 10 0
CUSTOMARY ESTATES. See "*Copyhold*."	
DEBENTURE for securing the payment or repayment of money or the transfer or retransfer of stock. See "*Mortgage*," &c., and "*Marketable Security*."	
DEBENTURE or CERTIFICATE for entitling any person to receive any allowance by way of drawback or otherwise payable out of the revenue of customs or excise, for or in respect of any goods, wares, or merchandise exported or shipped to be exported from the United Kingdom to any part beyond the sea.	
Where the allowance to be received does not exceed 10*l.*	0 1 0
Exceeds 10*l.* and does not exceed 50*l.* . .	0 2 6
Exceeds 50*l.*	0 5 0
DECLARATION of any use or trust of or concerning any property by any writing, not being a will, or an instrument chargeable with ad valorem duty as a settlement	0 10 0
DECLARATION (*Statutory*). See "*Affidavit*."	
DECREET ARBITRAL. See "*Award*."	
DEED whereby any real burden is declared or created on lands or heritable subjects in Scotland. See "*Mortgage*," &c., and section 86.	
DEED containing an obligation to infeft any person in heritable subjects in Scotland, under a clause of reversion, as a security for money. See "*Mortgage*," &c., and section 86.	

	Duty. £	s.	d.
DEED containing an obligation to infeft or seize in an annuity to be uplifted out of heritable subjects in Scotland. See "*Bond, Covenant,*" &c.			
DEED of any kind whatsoever, not described in this schedule	0	10	0
DEFEAZANCE. Instrument of defeazance of any conveyance, transfer, disposition, assignation, or tack, apparently absolute, but intended only as a security for money or stock. See "*Mortgage,*" &c., and section 86. In respect of marketable securities under hand only, see "*Agreement,*" and section 23.			
DELIVERY ORDER . . . . . And see sections 69, 70, and 71.	0	0	1
DEPOSIT of title deeds. See "*Mortgage,*" &c., and section 86.			
DEPUTATION or APPOINTMENT of a gamekeeper . .	0	10	0
DISPENSATION. See "*Faculty.*"			
DISPOSITION of heritable property in Scotland to singular successors or purchasers. See "*Conveyance on Sale.*"			
DISPOSITION of heritable property in Scotland to a purchaser, containing a clause declaring all or any part of the purchase money a real burden upon, or affecting, the heritable property thereby disponed, or any part thereof. See "*Conveyance on Sale,*" "*Mortgage,*" &c., and section 86.			
DISPOSITION in Scotland, containing constitution of feu or ground annual right. See "*Conveyance on Sale,*" and section 56.			
DISPOSITION in security in Scotland. See "*Mortgage,*" &c.			
DISPOSITION of any wadset, heritable bond, &c. See "*Mortgage,*" &c.			
DISPOSITION in Scotland of any property or of any right or interest therein not described in this schedule	0	10	0
DOCK WARRANT. See "*Warrant for Goods.*"			
DOCKET made on passing any instrument under the Great Seal of the United Kingdom . . .	0	2	0
DRAFT for money. See "*Bill of Exchange.*"			

	Duty. £ s. d.
DUPLICATE or COUNTERPART of any instrument chargeable with any duty. Where such duty does not amount to 5*s.*	The same duty as the original instrument.
In any other case	£ 0 s. 5 d. 0
And see section 72.	
EIK to a reversion. See "*Mortgage*," &c., and section 86.	
EQUITABLE MORTGAGE. See "*Mortgage*," &c., and sections 23 and 86.	
EXCHANGE or EXCAMBION—Instruments effecting. In the case specified in section 73, see that section.	
In any other case	0 10 0
EXEMPLIFICATION or CONSTAT, under the Great Seal of the United Kingdom of Great Britain and Ireland of any letters patent or grant made or to be made by Her Majesty, or by any of her royal predecessors of any honour, dignity, promotion, franchise, liberty, or privilege, or of any lands, office, or other thing whatsoever	5 0 0
EXEMPLIFICATION under the seal of any court in England or Ireland of any record or proceeding therein	3 0 0
EXTRACT. See "*Copy or Extract.*"	
FACTORY, in the nature of a letter or power of attorney in Scotland. See "*Letter or Power of Attorney.*"	
FACULTY, LICENCE, COMMISSION or DISPENSATION for admitting or authorising any person to act as a notary public :	
In England	30 0 0
In Scotland or Ireland	20 0 0
FACULTY or DISPENSATION of any other kind :	
In England	30 0 0
In Ireland	25 0 0
FEU CONTRACT in Scotland. See "*Conveyance on Sale*," and section 56.	
FOREIGN SECURITY. See "*Marketable Security*," and section 82.	
FURTHER CHARGE or FURTHER SECURITY. See "*Mortgage*," &c., and section 86.	

	Duty. £	s.	d.
GRANT or LETTERS PATENT under the Great Seal or wafer, Great Seal of the United Kingdom of Great Britain and Ireland, or of the Great Seal of Ireland, or the Seal of the Duchy or County Palatine of Lancaster, or under the Seal kept and used in Scotland in place of the Great Seal formerly used there :			
(1.) Of the honour or dignity of a duke . .	350	0	0
,, ,, of a marquis .	300	0	0
,, ,, of an earl . .	250	0	0
,, ,, of a viscount .	200	0	0
,, ,, of a baron . .	150	0	0
,, ,, of a baronet .	100	0	0
(2.) Of a congé d'élire to any dean and chapter for the election of an archbishop or bishop			
(3.) Of the Royal Assent to, or signification of, the election made by any dean and chapter, or of the nomination and presentation by Her Majesty, in default of such election of any person to be an archbishop or bishop	30	0	0
(4.) Of or for the restitution of the temporalities to any archbishop or bishop . .			
(5.) Of any other honour, dignity, or promotion whatsoever			
(6.) Of any franchise, liberty, or privilege to any person or body politic or corporate.			
And see section 74.			
GRANT or WARRANT OF PRECEDENCE to take rank among nobility, under the sign manual of Her Majesty	100	0	0
GRANT or LICENCE under the sign manual of Her Majesty to take and use a surname and arms, or a surname only.			
In compliance with the injunctions of any will or settlement	50	0	0
Upon any voluntary application . . .	10	0	0
GRANT of arms or armorial ensigns only, under the sign manual of Her Majesty, or by any of the Kings of Arms of England, Scotland, or Ireland .	10	0	0
GRANT of copyhold or customary estates. See "*Conveyance—Copyhold.*"			
GRANT of the custody of the person or estate of a lunatic	2	0	0
HERITABLE BOND. See "*Mortgage*," &c., and section 86.			

	Duty. £ s. d.
INSURANCE. See "*Policy.*"	
LEASE OR TACK—	
(1.) For any definite term not exceeding a year: Of any dwelling-house or part of a dwelling-house at a rent not exceeding the rate of 10*l.* per annum	0 0 1
(2.) For any definite term less than a year:—	
(*a.*) Of any furnished dwelling-house or apartments where the rent for such term exceeds 25*l.*	0 2 6
(*b.*) Of any lands, tenements, or heritable subjects except or otherwise than as aforesaid	The same duty as a lease for a year at the rent reserved for the definite term.
(3.) For any other definite term or for any indefinite term:	
Of any lands, tenements, or heritable subjects—	
Where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock, or security:	
In respect of such consideration . . .	The same duty as a conveyance on a sale for the same consideration.
Where the consideration or any part of the consideration is any rent:	
In respect of such consideration:	
If the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate:	

	If the term does not exceed 35 years, or is indefinite.			If the term exceeds 35 years, but does not exceed 100 years.			If the term exceeds 100 years.		
	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Not exceeding 5*l.* per annum	0	0	6	0	3	0	0	6	0
Exceeding—									
5*l.* and not exceeding 10*l.*	0	1	0	0	6	0	0	12	0
10*l.* „ „ 15*l.*	0	1	6	0	9	0	0	18	0
15*l.* „ „ 20*l.*	0	2	0	0	12	0	1	4	0
20*l.* „ „ 25*l.*	0	2	6	0	15	0	1	10	0
25*l.* „ „ 50*l.*	0	5	0	1	10	0	3	0	0
50*l.* „ „ 75*l.*	0	7	6	2	5	0	4	10	0
75*l.* „ „ 100*l.*	0	10	0	3	0	0	6	0	0
100*l.* For every full sum of 50*l.*, and also for any fractional part of 50*l.* thereof .	0	5	0	1	10	0	3	0	0

	Duty. £.	s.	d.
(4.) Of any other kind whatsoever not hereinbefore described	0	10	0

And see sections 75, 76, 77, and 78.

LETTER OF ALLOTMENT and LETTER of RENUNCIATION, or any other document having the effect of a letter of allotment:

(1.) Of any share of any company or proposed company			
(2.) In respect of any loan raised, or proposed to be raised, by any company or proposed company, or by any municipal body or corporation			
(3.) Issued or delivered in the United Kingdom, of any share of any foreign or colonial company or proposed company, or in respect of any loan raised or proposed to be raised by or on behalf of any foreign or colonial state, government, municipal body, corporation, or company	0	0	1

And SCRIP CERTIFICATE, SCRIP, or other document:

(1.) Entitling any person to become the proprietor of any share of any company or proposed company			
(2.) Issued or delivered in the United Kingdom, and entitling any person to become the proprietor of any share of any foreign or colonial company or proposed company			
(3.) Denoting, or intended to denote, the right of any person as a subscriber in respect of any loan raised or proposed to be raised by any company or proposed company, or by any municipal body or corporation	0	0	1
(4.) Issued or delivered in the United Kingdom, and denoting, or intended to denote, the right of any person as a subscriber in respect of any loan raised or proposed to be raised by or on behalf of any foreign or colonial state, government, municipal body, corporation, or company . .			

And see section 79.

LETTER OF CREDIT. See "*Bill of Exchange.*"

LETTER OR POWER OF ATTORNEY, and COMMISSION, FACTORY, MANDATE, or other instrument in the nature thereof:

	Duty. £	s.	d.
(1.) For the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more	0	0	1
(2.) By any petty officer, seaman, marine, or soldier serving as a marine, or his representatives, for receiving prize money or wages	0	1	0
(3.) For the receipt of the dividends or interest of any stock:			
Where made for the receipt of one payment only	0	1	0
In any other case	0	5	0
(4.) For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money, not exceeding 20*l.*, or any periodical payments not exceeding the annual sum of 10*l.* (*not being herein-before charged*) . . .	0	5	0
(5.) For the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds:			
Where the value of the stocks or funds does not exceed 20*l.* . . .	0	5	0
In any other case	0	10	0
(6.) Of any kind whatsoever not herein-before described	0	10	0

Exemptions.

(1.) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend less than 3*l.*

(2.) Letter or power of attorney or proxy filed in the Probate Division of the High Court of Justice in England or Ireland, or in any ecclesiastical court.

(3.) Order, request, or direction under hand only from the proprietor of any stock to any company or to any officer of any company or to any banker to pay the dividends or interest arising from the stock to any person therein named.

And see sections 80 and 81.

	Duty. £ s. d.
LETTERS OF MARQUE AND REPRISAL . . .	5 0 0
LETTERS PATENT. See "*Grant.*"	
LETTER OF REVERSION in Scotland. See "*Mortgage,*" &c., and section 86.	
LICENCE for marriage.	
Special—	
In England or Ireland	5 0 0
Not special—	
In England	0 10 0
LICENCE under the seal of any archbishop, bishop, chancellor, or other ordinary, or by any ecclesiastical court in England or Ireland, or by any presbytery or other ecclesiastical power in Scotland:	
(1.) To hold the office of lecturer, reader, chaplain, church clerk, chapel clerk, parish clerk, or sexton	0 10 0
(2.) For licensing a building for the performance of divine service within an ecclesiastical district formed under the provisions of the New Parishes Acts .	
(3.) For licensing any chapel for the solemnization of marriages therein, pursuant to the provisions of the Act 6 & 7 Will. 4, c. 85	
(4.) For any other purpose . . .	2 0 0

Exemptions.

(1.) Licence granted to any spiritual person to perform divine service in any building approved by the archbishop or bishop in lieu of a church or chapel whilst the same is under repair or is rebuilding, or in any building so approved for the convenience of the inhabitants of a parish resident at a distance from a church or consecrated chapel.

(2.) Licence to hold a perpetual curacy.

(3.) Licence to a stipendiary curate, wherein the annual amount of the stipend is specified.

(4.) Licence for the purpose of authorising or enabling any person to preach or exercise any other spiritual function, not being a licence to hold the office of lecturer, reader, or chaplain, and there being no salary or emolument for or attached to

	Duty. £ s. d.
the exercise of the function for which such licence is granted.	
(5.) Licence by any ecclesiastical authority for licensing or authorising any matter relating to a consecrated building or ground, or anything to be constructed, set up, taken down, or altered therein, or to be removed therefrom.	
LICENCE to act as a notary public. See "*Faculty.*"	
LICENCE to use surname or arms. See "*Grant.*"	
*MARKETABLE SECURITY [and FOREIGN or COLONIAL SHARE CERTIFICATE.]	
(1.) Marketable security (*a*) being a colonial government security or (*b*) being a security not transferable by delivery or (*c*) being a security transferable by delivery and bearing date or signed or offered for subscription before or on the sixth day of August one thousand eight hundred and eighty-five—	
For or in respect of the money thereby secured	The same ad valorem duty according to the nature of the security as upon a mortgage.
(2.) TRANSFER, ASSIGNMENT, DISPOSITION, or ASSIGNATION of a marketable security of any description—	
Upon a sale thereof—see conveyance or transfer on sale.	
Upon a mortgage thereof—see mortgage of stock or marketable security.	
In any other case than a sale or mortgage	0 10 0
(3.) Marketable security (except a colonial government security) being a security transferable by delivery and bearing date or signed or offered for subscription after the sixth day of August one thousand eight hundred and eighty-five—	
For every 10*l.* and also for any fractional part of 10*l.* of the money thereby secured	0 1 0
(4.) Marketable security (except a colonial government security) being such security	

* The words in brackets under this head are repealed by the Customs and Inland Revenue Act, 1893 (56 Vict. c. 7); see sect. 4 of that Act, and *ante*, p. 333.

	Duty. £	s.	d.
as last aforesaid given in substitution for a like security duly stamped in conformity with the law in force at the time when it became subject to duty—			
For every 20*l.*, and also for any fractional part of 20*l.*, of the money thereby secured . .	0	0	6
[(5.) Marketable security transferable by delivery whatever may be the date thereof, and wherever it may have been made or issued, or the interest may be payable.			
On the occasion of the first transfer thereof by delivery in the United Kingdom, and on the occasion of the first transfer thereof by delivery in the United Kingdom in any year after the year in which such first transfer by delivery shall happen—			
Where the amount secured does not exceed twenty-five pounds . .	0	0	3
Exceeds twenty-five pounds and does not exceed fifty pounds . .	0	0	6
Exceeds fifty pounds, for every fifty pounds and any fractional part of fifty pounds of such amount . .	0	0	6
Exemption.			
Any security, duly stamped with the duty of one shilling for every ten pounds, and also for any fractional part of ten pounds of the money thereby secured, or duly stamped as a substituted security for any security so stamped where such substituted security bears an impressed stamp denoting that the security for which it was substituted was so duly stamped.			
(6.) Foreign or Colonial share certificate.			
On the occasion of the first delivery thereof in the United Kingdom, and on the occasion of the first delivery thereof in the United Kingdom in any year after the year in which such first delivery shall happen—			
Where the nominal amount in money of the stock or debenture stock or funded debt does not exceed twenty-five pounds	0	0	3

	Duty. £	s.	d.
Exceeds twenty-five pounds and does not exceed fifty pounds	0	0	6
Exceeds fifty pounds, for every fifty pounds and any fractional part of fifty pounds of such amount	0	0	6

And see sections 82, 83, 84, and 85.

MARRIAGE LICENCE. See "*Licence.*"

MARRIAGE SETTLEMENT. See "*Settlement.*"

MEMORIAL to be registered pursuant to any Act for the time being in force relating to the public registering of deeds in England or Ireland:

		s.	d.
Where the instrument registered is chargeable with any duty not amounting to 2*s.* 6*d.* .	The same duty as the registered instrument.		
In any other case	0	2	6

MORTGAGE, BOND, DEBENTURE, COVENANT (except a marketable security otherwise specially charged with duty), and WARRANT OF ATTORNEY to confess and enter up judgment.

	£	s.	d.
(1.) Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money—			
Not exceeding 10*l.*	0	0	3
exceeding 10*l.* and not exceeding 25*l.* .	0	0	8
„ 25*l.* „ 50*l.* .	0	1	3
„ 50*l.* „ 100*l.* .	0	2	6
„ 100*l.* „ 150*l.* .	0	3	9
„ 150*l.* „ 200*l.* .	0	5	0
„ 200*l.* „ 250*l.* .	0	6	3
„ 250*l.* „ 300*l.* .	0	7	6
„ 300*l.*			
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount secured .	0	2	6
(2.) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped:			
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount secured	0	0	6

	Duty. £	s.	d.
(3.) Being an equitable mortgage: For every 100*l.*, and any fractional part of 100*l.*, of the amount secured . .	0	1	0
(4.) TRANSFER, ASSIGNMENT, DISPOSITION, or ASSIGNATION of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment: For every 100*l.*, and also for any fractional part of 100*l.*, of the amount transferred, assigned, or disponed, exclusive of interest which is not in arrear	0	0	6
And also where any further money is added to the money already secured	The same duty as a principal security for such further money.		
(5.) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER, WARRANT TO VACATE, or RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured: For every 100*l.*, and also for any fractional part of 100*l.*, of the total amount or value of the money at any time secured . .	0	0	6
And see sections 86, 87, 88, and 89.			
MORTGAGE OF STOCK or Marketable Security— Under hand only. See "*Agreement*," and section 23. By deed. See "*Mortgage*," and section 86.			
MUTUAL DISPOSITION or Conveyance in Scotland. See "*Exchange*" or "*Excambion*."			
NOTARIAL ACT of any kind whatsoever (*except a protest of a bill of exchange or promissory note or any notarial instrument to be expeded and recorded in any register of sasines*)	0	1	0
And see "*Protest*," "*Seisin*," and section 90.			
ORDER for the payment of money. See "*Bill of Exchange*."			
PARTITION or DIVISION—Instruments effecting. In the case specified in section 73, see that section.			
In any other case	0	10	0

	Duty. £	s.	d.
PASSPORT	0	0	6
POLICY OF SEA INSURANCE—			
(1.) Where the premium or consideration does not exceed the rate of 2*s.* 6*d.* per centum of the sum insured . .	0	0	1
(2.) In any other case—			
(*a.*) For or upon any voyage—			
In respect of every full sum of 100*l.*, and also any fractional part of 100*l.* thereby insured	0	0	3
(*b.*) For time—			
In respect of every full sum of 100*l.*, and also any fractional part of 100*l.* thereby insured—			
Where the insurance shall be made for any time not exceeding six months	0	0	3
Where the insurance shall be made for any time exceeding six months and not exceeding twelve months .	0	0	6
And see sections 91, 92, 93, 94, 95, 96, and 97.			
POLICY OF LIFE INSURANCE—			
Where the sum insured does not exceed 10*l.* .	0	0	1
Exceeds 10*l.* but does not exceed 25*l.* . .	0	0	3
Exceeds 25*l.* but does not exceed 500*l.*:			
For every full sum of 50*l.*, and also for any fractional part of 50*l.*, of the amount insured	0	0	6
Exceeds 500*l.* but does not exceed 1,000*l.*:			
For every full sum of 100*l.*, and also for any fractional part of 100*l.*, of the amount insured	0	1	0
Exceeds 1,000*l.*:			
For every full sum of 1,000*l.*, and also for any fractional part of 1,000*l.*, of the amount insured	0	10	0
And see sections 91, 98, and 100.			
POLICY OF INSURANCE AGAINST ACCIDENT and POLICY of insurance for any payment agreed to be made during the sickness of any person, or his incapacity from personal injury, or by way of indemnity against loss or damage of or to any property	0	0	1
And see sections 91, 98, 99, and 100.			
POWER OF ATTORNEY. See "*Letter of Attorney.*"			

	Duty. £	s.	d.
PRECEPT OF CLARE CONSTAT to give seisin of lands or other heritable subjects in Scotland . .	0	5	0
PROCURATION, deed, or other instrument of . .	0	10	0
PROMISSORY NOTE. See "*Bank Note*," "*Bill of Exchange.*"			
PROTEST of any bill of exchange or promissory note:			
Where the duty on the bill or note does not exceed 1*s.*	The same duty as the bill or note.		
	£	s.	d.
In any other case	0	1	0
And see section 90.			
PROXY. See "*Letter or Power of Attorney.*"			
RECEIPT given for, or upon the payment of, money amounting to 2*l.* or upwards	0	0	1

Exemptions.

(1.) Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for.

(2.) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.

(3.) Receipt given for or upon the payment of any parliamentary taxes or duties, or of money to or for the use of Her Majesty.

(4.) Receipt given by an officer of a public department of the State for money paid by way of imprest or advance, or in adjustment of an account, where he derives no personal benefit therefrom.

(5.) Receipt given by any agent for money imprested to him on account of the pay of the army.

(6.) Receipt given by any officer, seaman, marine or soldier, or his representatives, for or on account of any wages, pay or pension, due from the Admiralty or Army Pay Office.

(7.) Receipt given for any principal money or interest due on an exchequer bill.

(8.) Receipt written upon a bill of exchange or promissory note duly stamped, or upon a bill drawn by any person under the

	Duty. £ s. d.
authority of the Admiralty, upon and payable by the Accountant General of the Navy.	
(9.) Receipt given upon any bill or note of the Bank of England or the Bank of Ireland.	
(10.) Receipt given for the consideration money for the purchase of any share in any of the Government or Parliamentary stocks or funds, or in the stocks and funds of the Secretary of State in Council of India, or of the Bank of England, or of the Bank of Ireland, or for any dividend paid on any share of the said stocks or funds respectively.	
(11.) Receipt indorsed or otherwise written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured or therein mentioned.	
(12.) Receipt given for any allowance by way of drawback or otherwise upon the exportation of any goods or merchandise from the United Kingdom.	
(13.) Receipt given for the return of any duty of customs upon a certificate of over entry.	
And see sections 101, 102, and 103.	
RECONVEYANCE, RELEASE, or RENUNCIATION of any security. See "*Mortgage*," &c.	
RELEASE or RENUNCIATION of any property, or of any right or interest in any property—	
Upon a sale. See "*Conveyance on Sale.*"	
By way of security. See "*Mortgage*," &c.	
In any other case	0 10 0
RENUNCIATION. See "*Reconveyance*" and "*Release.*"	
RENUNCIATION, LETTER OF. See "*Letter of Allotment.*"	
RESIGNATION. Principal or original instrument of resignation, or service of cognition of heirs, or charter or seisin of any houses, lands, or other heritable subjects in Scotland holding burgage, or of burgage tenure	0 5 0
And instrument of resignation of any lands or other heritable subjects in Scotland not of burgage tenure	0 5 0

	Duty. £	s.	d.
REVOCATION of any use or trust of any property by any writing, not being a will	0	10	0
SCRIP CERTIFICATE or SCRIP. See "*Letter of Allotment.*"			
SEISIN. Instrument of seisin given upon any charter, precept of clare constat, or precept from chancery, or upon any wadset, heritable bond, disposition, apprizing, adjudication, or otherwise of any lands or heritable subjects in Scotland	0	5	0
And any NOTARIAL INSTRUMENT to be expeded and recorded in any register of sasines	0	5	0
SETTLEMENT. Any instrument, whether voluntary or upon any good or valuable consideration, other than a *bonâ fide* pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled or agreed to be settled in any manner whatsoever :			
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount or value of the property settled or agreed to be settled .	0	5	0
Exemption.			
Instrument of appointment relating to any property in favour of persons specially named or described as the objects of a power of appointment, where duty has been duly paid in respect of the same property upon the settlement creating the power or the grant of representation of any will or testamentary instrument creating the power.			
And see sections 104, 105, and 106.			
SHARE CERTIFICATE, FOREIGN AND COLONIAL. See "*Marketable Security.*"			
SHARE WARRANT issued under the provisions of the Companies Act, 1867, and STOCK CERTIFICATE to bearer.	A duty of an amount equal to three times the amount of the ad valorem stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant or certificate if the consideration for the transfer were the nominal value of such share or shares or stock.		
And see sections 107, 108, and 109.			

	Duty. £ s. d.
SUPERANNUATION ANNUITY. See "*Bond*," "*Covenant*," &c.	
SURRENDER—	
Of copyholds. See "*Copyhold.*"	
Of any other kind whatsoever not chargeable with duty as a conveyance on sale or a mortgage	0 10 0
TACK of lands, &c. in Scotland. See "*Lease*" or "*Tack.*"	
TACK IN SECURITY. See "*Mortgage*," &c.	
TRANSFER. See "*Conveyance*" or "*Transfer.*"	
TRANSFER. Any request or authority to the purser or other officer of any mining company, conducted on the cost book system, to enter or register any transfer of any share, or part of a share, in any mine, or any notice to such purser or officer of any such transfer.	0 0 6
And see section 110.	
VALUATION. See "*Appraisement.*"	
VOTING PAPER. Any instrument for the purpose of voting by any person entitled to vote at any meeting of any body exercising a public trust, or of the shareholders, or members, or contributors to the funds of any company, society, or institution . .	0 0 1
And see section 80.	
WADSET. See "*Mortgage*," &c.	
WARRANT OF ATTORNEY to confess and enter up a judgment given as a security for the payment or repayment of money, or for the transfer or re-transfer of stock. See "*Mortgage*," &c.	
WARRANT OF ATTORNEY of any other kind . .	0 10 0
WARRANT FOR GOODS	0 0 3
Exemptions.	
(1.) Any document or writing given by an inland carrier acknowledging the receipt of goods conveyed by such carrier.	
(2.) A weight note issued together with a duly stamped warrant, and relating solely to the same goods, wares, or merchandise.	
And see section 111.	
WARRANT under the sign manual of Her Majesty .	0 10 0

	Duty. £	s.	d.	
WRIT—				
(1.) Of ACKNOWLEDGMENT under the Registration of Leases (Scotland) Act, 1857 .				20 & 21 Vict. c. 26.
(2.) Of ACKNOWLEDGMENT by any person infeft in lands in Scotland in favour of the heir or disponee of a creditor fully vested in right of an heritable security constituted by infeftment . . .	0	5	0	
(3.) Of RESIGNATION and CLARE CONSTAT. .				

GENERAL EXEMPTIONS FROM ALL STAMP DUTIES.

(1.) Transfers of shares in the Government or Parliamentary stocks or funds.

(2.) Instruments for the sale, transfer, or other disposition either absolutely or by way of mortgage, or otherwise, of any ship or vessel, or any part, interest, share, or property of or in any ship or vessel.

(3.) Instruments of apprenticeship, bonds, contracts, and agreements entered into in the United Kingdom for or relating to the service in any of Her Majesty's colonies or possessions abroad of any person as an artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or labourer.

(4.) Testaments, testamentary instruments, and dispositions *mortis causâ* in Scotland.

(5.) Bonds given to sheriffs or other persons in Ireland upon the replevy of any goods or chattels, and assignments of such bonds.

(6.) Instruments made by, to, or with the Commissioners of Works for any of the purposes of the Act 15 & 16 Vict. c. 28.

TABLE OF AD VALOREM DUTIES ON SETTLEMENTS.

Pp. 161, 162.—Owing to some clerical or other error the *ad valorem* stamp duties payable on settlements of amounts exceeding £3200 are not correctly stated. The duties payable are as follows:—

Exceeding.	Not exceeding.	Duty.			Exceeding.	Not exceeding.	Duty.			Exceeding.	Not exceeding.	Duty.		
£	£	£	s.	d.	£	£	£	s.	d.	£	£	£	s.	d.
3200	3250	8	5	0	5500	5550	14	0	0	7800	7850	19	15	0
3250	3300	8	5	0	5550	5600	14	0	0	7850	7900	19	15	0
3300	3350	8	10	0	5600	5650	14	5	0	7900	7950	20	0	0
3350	3400	8	10	0	5650	5700	14	5	0	7950	8000	20	0	0
3400	3450	8	15	0	5700	5750	14	10	0	8000	8050	20	5	0
3450	3500	8	15	0	5750	5800	14	10	0	8050	8100	20	5	0
3500	3550	9	0	0	5800	5850	14	15	0	8100	8150	20	10	0
3550	3600	9	0	0	5850	5900	14	15	0	8150	8200	20	10	0
3600	3650	9	5	0	5900	5950	15	0	0	8200	8250	20	15	0
3650	3700	9	5	0	5950	6000	15	0	0	8250	8300	20	15	0
3700	3750	9	10	0	6000	6050	15	5	0	8300	8350	21	0	0
3750	3800	9	10	0	6050	6100	15	5	0	8350	8400	21	0	0
3800	3850	9	15	0	6100	6150	15	10	0	8400	8450	21	5	0
3850	3900	9	15	0	6150	6200	15	10	0	8450	8500	21	5	0
3900	3950	10	0	0	6200	6250	15	15	0	8500	8550	21	10	0
3950	4000	10	0	0	6250	6300	15	15	0	8550	8600	21	10	0
4000	4050	10	5	0	6300	6350	16	0	0	8600	8650	21	15	0
4050	4100	10	5	0	6350	6400	16	0	0	8650	8700	21	15	0
4100	4150	10	10	0	6400	6450	16	5	0	8700	8750	22	0	0
4150	4200	10	10	0	6450	6500	16	5	0	8750	8800	22	0	0
4200	4250	10	15	0	6500	6550	16	10	0	8800	8850	22	5	0
4250	4300	10	15	0	6550	6600	16	10	0	8850	8900	22	5	0
4300	4350	11	0	0	6600	6650	16	15	0	8900	8950	22	10	0
4350	4400	11	0	0	6650	6700	16	15	0	8950	9000	22	10	0
4400	4450	11	5	0	6700	6750	17	0	0	9000	9050	22	15	0
4450	4500	11	5	0	6750	6800	17	0	0	9050	9100	22	15	0
4500	4550	11	10	0	6800	6850	17	5	0	9100	9150	23	0	0
4550	4600	11	10	0	6850	6900	17	5	0	9150	9200	23	0	0
4600	4650	11	15	0	6900	6950	17	10	0	9200	9250	23	5	0
4650	4700	11	15	0	6950	7000	17	10	0	9250	9300	23	5	0
4700	4750	12	0	0	7000	7050	17	15	0	9300	9350	23	10	0
4750	4800	12	0	0	7050	7100	17	15	0	9350	9400	23	10	0
4800	4850	12	5	0	7100	7150	18	0	0	9400	9450	23	15	0
4850	4900	12	5	0	7150	7200	18	0	0	9450	9500	23	15	0
4900	4950	12	10	0	7200	7250	18	5	0	9500	9550	24	0	0
4950	5000	12	10	0	7250	7300	18	5	0	9550	9600	24	0	0
5000	5050	12	15	0	7300	7350	18	10	0	9600	9650	24	5	0
5050	5100	12	15	0	7350	7400	18	10	0	9650	9700	24	5	0
5100	5150	13	0	0	7400	7450	18	15	0	9700	9750	24	10	0
5150	5200	13	0	0	7450	7500	18	15	0	9750	9800	24	10	0
5200	5250	13	5	0	7500	7550	19	0	0	9800	9850	24	15	0
5250	5300	13	5	0	7550	7600	19	0	0	9850	9900	24	15	0
5300	5350	13	10	0	7600	7650	19	5	0	9900	9950	25	0	0
5350	5400	13	10	0	7650	7700	19	5	0	9950	10000	25	0	0
5400	5450	13	15	0	7700	7750	19	10	0					
5450	5500	13	15	0	7750	7800	19	10	0					

Chapter II.—Probate Duty.

P. 174, line 7.—By the Customs and Inland Revenue Act, 1889 (52 Vict. c. 7), an additional duty, called "estate duty," at the rate of £1 for every £100, or part of £100, is imposed on personal estates of testators and intestates where the value of such estates exceeds £10,000. The Act enacts as follows:— Estate duty.

"5.—(1.) Where, in the case of any person applying for probate or letters of administration granted in England or Ireland on or after the first day of June one thousand eight hundred and eighty-nine, or in the case of any person exhibiting an inventory in Scotland on or after that day, the value of the estate and effects in respect whereof duty is charged on the affidavit or inventory by section twenty-seven of the Customs and Inland Revenue Act, 1881, exceeds ten thousand pounds, he shall together with such affidavit or inventory deliver a statement of the value of such estate and effects. The statement shall be transmitted with the affidavit or inventory to the Commissioners of Inland Revenue by the proper officer of the High Court of Justice in England or Ireland, or of the proper Court in Scotland, and the certificate required under section thirty of the said Act shall extend to, and include the fact of the delivery of the statement. Estate duty on personal property passing by will or on intestacy.

(2.) Where the value of the personal or moveable property included in an Account delivered according to section thirty-eight of the Customs and Inland Revenue Act, 1881, on or after the first day of June one thousand eight hundred and eighty-nine, exceeds ten thousand pounds, the person delivering the Account shall also deliver together therewith a statement of the value of such property.

(3.) Where pursuant to the provisions of sections thirty-two of the Customs and Inland Revenue Act, 1881, a further affidavit is required to be delivered by any person, and where any person intromitting with, or entering upon the possession or management of, any personal or moveable estate or effects in Scotland of any person dying, is required by law to exhibit an additional inventory, the following provisions shall apply:

(*a.*) If the value of the estate and effects in respect whereof duty was charged on the former affidavit or inventory under section twenty-seven of the Customs and Inland Revenue Act, 1881, exceeded ten thousand pounds, the person delivering the further affidavit or exhibiting the additional inventory shall deliver together therewith a statement of the value of the estate and effects included therein or of the increase of value of the estate and effects included in the former affidavit or inventory, as the case may be:

(*b.*) If the value of the estate and effects in respect whereof duty has been charged under the Customs and Inland Revenue Act, 1881, did not exceed ten thousand pounds, and such value together with the value of the estate and effects included in the further affidavit or additional inventory delivered or exhibited or the increased value, as the case may be, exceeds ten thousand pounds, such person delivering the further affidavit or exhibiting the additional inventory shall deliver together therewith a statement of the value of the estate and effects included therein, and in the former affidavit or inventory, or of the value as increased of the estate and effects included in the former affidavit or inventory, as the case may be.

(4.) There shall be charged and paid on every statement to be delivered in conformity with this section a duty of one pound for every full sum of one hundred pounds, and for any fraction of one hundred pounds over any multiple of one hundred pounds of the value of the estate and effects or of the personal or moveable property, as the case may be.

(5.) The duties respectively imposed by this section are to be in addition to the stamp duties charged on the affidavit required from persons applying for probate or letters of administration in England or Ireland, and on the inventory exhibited and recorded in Scotland, and in addition to the stamp duties charged on such Accounts of personal and moveable property as are specified in section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by this Act, but are not to be deemed "probate duties" within the meaning assigned to that expression by section twenty-one of the Local Government Act, 1888, or by section five of the Probate Duties (Scotland and Ireland) Act, 1888.

44 & 45 Vict. c. 12.

51 & 52 Vict. c. 41.

51 & 52 Vict. c. 60.

(6.) The provisions contained in section thirty-one of the Customs and Inland Revenue Act, 1881, for the return of stamp duty overpaid, shall apply to the return of duty overpaid on any statement delivered under this section, and in Scotland a return of duty overpaid on any statement so delivered shall be made in like manner as a return is now made of stamp duty overpaid on an additional inventory.

(7.) Where a further affidavit or additional inventory is delivered or exhibited of any estate or effects of a deceased person after a former affidavit or inventory of the estate and effects of the same person has been delivered or exhibited and recorded prior to the first day of June one thousand eight hundred and eighty-nine, it shall not be necessary to deliver any statement of the value of the estate and effects of such person under this section."

Sect. 27 of the Customs and Inland Revenue Act, 1881, is set out Vol. VII., p. 172.

Sect. 38 of the same Act is set out Vol. VII., p. 198.

Sect. 32 of the same Act is set out Vol. VII., p. 193.

Sect. 21 of the Local Government Act, 1888, assigns to County Councils a portion of the amount of "probate duties" as there defined.

Sect. 5 of the Probate Duties (Scotland and Ireland) Act, 1888, contains a definition of "probate duties" for the purposes of that Act, *i.e.*, for the purpose of assigning to Scotland and Ireland respectively certain shares of probate duties, and of providing for the application of such shares.

Incidence of estate duty.

The duties imposed by s. 27 of the Act of 1881, and by s. 5 of the Act of 1889, follow the same principle as that which governs probate duty, and accordingly must be borne by the general residuary estate: *Re Bourne*, *Martin* v. *Martin*, [1893] 1 Ch. 188.

Duration of estate duties.

By s. 7 of the Act of 1889 the duration of the charge of estate duties imposed by the Act is limited to the estates and effects of persons dying before the 1st June, 1896.

Penalty for default.

By s. 8 double duty is imposed in case of default in delivering a statement as required by the Act; and interest at the rate of four per cent. per annum is made payable on estate duty in arrear.

Duties to be stamp duties.

By s. 9 it is provided that estate duties shall be stamp duties under the care and management of the Commissioners of Inland Revenue.

Notices.

As to notices under the Act, see s. 15.

Limitation of claims to duty.

Sect. 14 of the Customs and Inland Revenue Act, 1889, limits the claims of the Crown in respect of estate duty as follows:—

Liability to duty under documents admitted to probate to cease after a specified period.

"No person shall, under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any legacy duty or succession duty, *or duty hereinbefore imposed by this part of this Act*, after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator shall, after the expiration of such six years, be liable to such duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief."

P. 176, lines 4 *et seq.*—By s. 18 of the Revenue Act, 1889 (52 & 53 Vict. c. 42), it is enacted as follows:—

Amendment of 46 & 47 Vict. c. 30, *sect.* 7, as to shares in Colonial registers.

"Notwithstanding *provision* (*b*) *in section seven* of the Companies (Colonial Registers) Act, 1883, the share or other interest of a deceased member, registered in a colonial register under that Act, who shall have died domiciled elsewhere than in the United Kingdom, shall, so far as relates to British duties, not be deemed to be part of his estate and effects situated in the United Kingdom, for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded."

The words in italics are obviously a clerical error for "provision (b) of sub-section seven of section three" of the Act referred to. There is no "section seven" in the Act.

Partnership property abroad.

P. 181, line 19.—Probate duty attaches to *bona notabilia* in the place where the property is situated, irrespective of the question of the domicile of the testator; and the share of a deceased partner is situated where the business is actually carried on: *Laidlay* v. *Lord Advocate*, 15 App. Cas. 468, Sc. (cited *ante*, p. 254).

Mistake in valuation.

P. 193, line 31.—Where executors have delivered an affidavit and account showing property of a testator to be of a certain amount or value according to a valuation made for the purposes of probate, and have completely wound up the administration of the estate, they will not, in the absence of proof of negligence or fraud, be held liable for payment of further duty under s. 32 of the Customs and Inland Revenue Act, 1881, by reason of a larger sum than that stated in the account being subsequently realised by sale of the property: *Att.-Gen.* v. *Smith*, [1893] 1 Q. B. 239, C. A.

Account duty.

The law as to duties on accounts as enacted by s. 38 of the Customs and Inland Revenue Act, 1881, is amended by s. 11 of the Customs and Inland Revenue Act, 1889 (52 Vict. c. 7), which is as follows:—

Amendment of 44 & 45 Vict. c. 12, s. 38.

Sect. 11.—(1.) "Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881, is hereby amended, as follows:—

The description of property marked (*a*) shall be read as if the word 'twelve' were substituted for the word 'three' therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have

been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise:

The description of property marked (*b*) shall be construed as if the expression 'to be transferred to or vested in himself and any other person' included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person:

The description of property marked (*c*) shall be construed as if the expression 'voluntary settlement' included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression 'such property,' wherever the same occurs, included the proceeds of sale thereof:

The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

(2.) A return of stamp duty shall not be made under subsection three of the said section thirty-eight by reason of, or in relation to, any account delivered on or after the first day of June one thousand eight hundred and eighty-nine."

Retrospective effect of this section.

This enactment is retrospective, and is to be read into the provisions of s. 38 of the Act of 1881, as if it had originally been contained in that section: *Att.-Gen.* v. *Theobald*, 24 Q. B. D. 557.

What are "voluntary settlements."

As to what are "voluntary settlements" within the meaning of s. 38 of the Act of 1881, as amended by s. 11 of the Act of 1889, see *Att.-Gen.* v. *Chapman*, [1891] 2 Q. B. 526; *Att.-Gen.* v. *Gosling*, [1892] 1 Q. B. 545.

Incidence of account duty.

The account duty payable under these Acts in respect of trust funds comprised in a "voluntary settlement" must be borne by all the beneficiaries rateably according to their respective shares: *Re Croft, Deane* v. *Croft*, [1892] 1 Ch. 652. *Secus* as to estate duty, see *ante*, p. 385.

Chapter III.—Legacy Duty.

Erratum. **P. 202,** *ad fin.*—The enactment here cited should run as follows, viz.: "For every legacy, specific or pecuniary, *or* of any other description," &c.

Cesser of duty at 1 per cent. **P. 203, lines 15 to 20.**—The duty at 1 per cent. is not payable where duty has already been paid on the affidavit or inventory or account: see s. 41 of the stat. 44 Vict. c. 12, cited Vol. VII., p. 248.

Erratum. **P. 205, line 11.**—For "18 & 19 Vict. c. 51," read "16 & 17 Vict. c. 51."

Annual sum for managing testator's business. **P. 212, line 7.**—Testamentary gifts of annual sums to trustees or others for management of the testator's business are legacies subject to duty under s. 4 of the stat. 8 & 9 Vict. c. 76: *Re Thorley, Thorley* v. *Massam*, [1891] 2 Ch. 613, C. A.

Share in partnership land abroad. **P. 221, line 12.**—After *Forbes* v. *Steven*, add *Re Stokes, Stokes* v. *Ducroz*, W. N. 1890, p. 18, 62 L. T. 176, 38 W. R. 535 (stated *ante*, p. 254).

Cesser of liability for duty. **P. 240, line 28.**—By s. 14 of the Customs and Inland Revenue Act, 1889 (set out *ante*, p. 385), the liability for payment of legacy duty ceases after six years from the settlement of the account in respect of which the duty is payable.

Chapter IV.—Succession Duty.

Exemption from corporation duty. **P. 259, note (*p*).**—The Customs and Inland Revenue Act, 1885, s. 11, by sub-s. (3) thereof exempts from the duty imposed by the Act property appropriated for any purpose of religion or charity, or for the promotion of education, literature, science, or the fine arts. As to charitable purposes, see *Re Linendrapers' Institution*, 58 L. T. 949; *Inland Revenue Commrs.* v. *Scott*, [1892] 2 Q. B. 152, C. A.; and as to science, see *Inland Revenue Commrs.* v. *Forrest*, 15 App. Cas. 334.

Sub-s. (5) of the same section exempts bodies corporate or incorporate "established for any trade or business." See as to this, *Re Incorporated Council of Law Reporting*, 22 Q. B. D. 279.

P. 262, *ad fin.*—By s. 10, sub-s. (1) of the Customs and Inland Revenue Act, 1889 (52 Vict. c. 7), it is enacted as follows :— Allowances in respect of succession duty.

"The allowance under section thirty-eight of the Succession Duty Act, 1853, to a successor upon taking a succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine, shall only be made in respect of the value of property which the successor may have acquired by any title not conferring a succession on him, and which passes from the successor to some other person."

P. 264, line 4.—The Customs and Inland Revenue Act, 1889, limits the liability to succession duty on real property in certain cases, as follows :—

Sect. 12.—(1.) "Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provision contained in that Act, real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for succession duty, or duty herein-before imposed by this part of this Act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this Act) which gave rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this Act, then after the expiration of six years from the last-mentioned date. Purchasers and mortgagees exempted from liability to succession duty after a specified period.

(2.) The duty (if any) unpaid at the expiration of such period of six years, or of twelve years or six years as the case may be, shall be payable and paid by the successor or the persons mentioned as accountable in section forty-four of the said Act, other

than the purchaser or mortgagee, and shall become charged substitutively upon any other estate or interest comprised in the succession of the successor remaining vested in him, or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption.

(3.) This section is not to lessen or affect any liability of any successor or accountable person, other than the purchaser or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise; but a purchaser or mortgagee shall not, for the purpose of obtaining the exemption conferred by this section, be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage.

Power to deposit copies of documents and liability to duty to cease after specified period.

Sect. 13.—(1.) Any person may cause an attested copy (which shall be exempt from stamp duty) of any document which creates a liability for payment of any succession duty, or duty hereinbefore imposed by this part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office.

(2.) The officer of the Commissioners receiving the copy shall, on request of the person making the deposit, and either by indorsement on the original document or otherwise, give a receipt in writing under his hand for the copy.

(3.) After a receipt has been given by an officer for a copy of a document under this section, no person shall be liable for payment of any duty under such document after the expiration of six years from the date of notice to the Commissioners of the fact which gives rise to an immediate claim to such duty.

(4.) The costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties, as trustee, executor, or administrator, or otherwise, under the document."

P. 265, line 14.—By s. 10, sub-s. (3) of the Customs and Inland Revenue Act, 1889, it is enacted as follows:—

"The Commissioners of Inland Revenue, if dissatisfied with the account and estimate originally delivered in conformity with section forty-five of the Succession Duty Act, 1853, may, subject to appeal as therein provided, assess the duty on the footing of such account and upon such estimate as they may place thereon, or proceed according to the directions of that section."

P. 266, line 21.—By s. 6 of the Customs and Inland

Revenue Act, 1889, an estate duty at the rate of one per cent. is charged upon any succession where the value of the succession exceeds 10,000*l*. The section is as follows :—

Estate duty on succession.

6.—(1.) "Where the value of any succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine chargeable with duty under the Succession Duty Act, 1853, and the Customs and Inland Revenue Act, 1888, exceeds ten thousand pounds, and where the value of any succession to real property under the will or intestacy of any person so dying chargeable with duty under the said Act does not exceed ten thousand pounds, but such value together with the value of any other benefit taken by the successor under such will or intestacy exceeds ten thousand pounds, a separate statement of the value of the succession shall be delivered to the Commissioners of the Inland Revenue, together with the Account to be delivered under section forty-five of the said Act.

16 & 17 Vict. c. 51.

(2.) There shall be charged and paid on every statement to be delivered in conformity with this section, in respect of the value of the succession, a duty of one pound for every full sum of one hundred pounds, and for any fraction of one hundred pounds over any multiple of one hundred pounds of such value.

(3.) The duty imposed by this section shall not be payable upon the value of leaseholds passing by will or devolution by law or of property included in an Account delivered according to section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by this Act, in respect of which value duty has been paid under the last preceding section.

(4.) The duty imposed by this section is to be in addition to any duties chargeable under the Succession Duty Act, 1853, and section twenty-one of the Customs and Inland Revenue Act, 1888, and shall, subject to the provisions of this Act, be assessed and paid in like manner as succession duty, and be subject to the enactments relating to that duty, so far as the same are applicable.

(5.) The value upon which the duty imposed by this section in respect of a succession to real property is to be charged and assessed shall be ascertained in accordance with the Succession Duty Act, 1853, subject to the following provisions :

(*a.*) In the case of a successor who is entitled to the real property comprised in his succession for an estate in fee simple, or in fee according to the custom of any manor, or for lives renewable under any custom or under any lease for lives, or for any estate in tail, or under an entail under which he can acquire the property in fee simple without consent of any person, or is entitled to any such property for life, and competent to dispose as he shall think fit of a continuing interest therein, the value shall be the principal

value of such property based upon the annual value estimated after making such allowances (if any) as ought to be made under the said Act. The duty payable in respect of such principal value shall not in any case exceed the amount which would be chargeable upon an annuity equal to such annual value according to the highest value in Table III. in the Schedule of the Succession Duty Act, 1853 :

(*b.*) In the case of an increase of benefit accruing to a successor, and chargeable to succession duty by reference to sections five, twenty, or twenty-five of the Succession Duty Act, 1853, where the value of the succession, apart from the increase of benefit, shall exceed ten thousand pounds, such increase of benefit shall be chargeable with duty under this section, whatever may be the value thereof; and where the value of the succession, apart from the increase of benefit, shall not exceed ten thousand pounds, the value of such increase of benefit, as well as of every preceding increase of benefit, shall be added to the value of the succession for the purpose of the said duty.

(6.) The duty imposed by this section shall in the case of real property be a first charge thereon, or on the interest of the successor therein, according as the duty is or is not chargeable on the principal value of such property, and shall be paid in like manner as if the duty were a part of the succession duty payable under section twenty-two of the Customs and Inland Revenue Act, 1888, and together with the payments in respect of that duty."

As to the duration of the charge, penalties on default and other matters relating to estate duties, see *ante*, p. 385.

Effect of this enactment.

Where, under a marriage settlement, upon the death of the settlor who was the father of the wife, a fund exceeding 10,000*l.* fell into possession and became vested in the trustees in trust for the wife for life with remainders in favour of the children of the marriage, it was held that this was a succession on which estate duty was payable, and was to be assessed in the same manner as succession duty: *Att.-Gen.* v. *Lord Aberdare*, [1892] 2 Q. B. 684.

Addendum.

P. 272, line 12.—*Att.-Gen.* v. *Montefiore's Executors*, is now reported 21 Q. B. D. 464.

Wife's absolute interest in default of issue.

P. 275, line 19.—Where a father upon his daughter's marriage settled a fund upon the trusts for the wife and husband during their lives, with remainders in favour of the issue of the marriage, with the usual ultimate trusts for the wife in

default of issue it was held that the death of the husband without issue during the coverture, whereupon the fund became the absolute property of the wife, conferred on her a succession liable to duty on the amount of the fund less the value of her life-interest therein: *Att.-Gen.* v. *Robertson*, [1893] 1 Q. B. 293, C. A.

Reversionary interest.

P. 276, line 36.—The principle of the rule laid down in *Fryer* v. *Morland*, was recognised by *Chitty*, J. in *De Rechberg* v. *Beeton*, 38 Ch. D. 192, where, however, upon the facts of the case his lordship held that succession duty was payable.

Meaning of "ancestor."

P. 279, *ad fin.*—After *De Lancey* v. *The Queen*, add *Lord Advocate* v. *Dunlop's Trustees*, 19 C. of S. Cas. Sc. 461.

Addendum.

P. 289, line 25.—*Ex parte Sitwell* is now reported 21 Q. B. D. 466.

Annual value of property.

P. 290, line 19.—In *Lord Advocate* v. *Duke of Buccleuch*, 15 C. of S. Cas. Sc. 333, unlet shootings were held to be liable to succession duty.

Sale of land by tenant for life.

P. 294, note (*l*).—The Commissioners of Inland Revenue admit generally that, in case of a sale under the Settled Land Acts, the liability to succession duty is transferred from the land sold to the purchase money, so that the purchaser is not concerned with respect to the duty; but they maintain that any unpaid instalments of the succession duty in respect of the tenant for life's own succession which may have actually fallen due before the sale will continue a charge on the land: see Sol. Journ., 28 March, 1891, pp. 559, 560.

Liability of purchaser.

P. 298, *ad fin.*—After *Cooper* v. *Trewby*, add *Re Langham*, W. N. 1890, p. 213, 39 W. R. 156, C. A.

Exemption of estates under 100*l.* in value.

P. 299, lines 16 *et seq.*—By sect. 10, subsect. (2) of the Customs and Inland Revenue Act, 1889 (52 Vict. c. 7) it is enacted as follows:—

"Subject to the relief given by section eighteen of the Succession Duty Act, 1853, in respect of property not amounting in money or principal value to the sum of one hundred pounds, the duties charged under the said Act, and section twenty-one of the Customs and Inland Revenue Act, 1888, shall be payable upon a succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine, although the value thereof shall be less than twenty pounds."

WILLS.

PRELIMINARY DISSERTATION.

Chapter I.—Introductory.

Form of Will.

Deed poll held testamentary.

P. 305, line 13.—After *Habergham* v. *Vincent*, add *Re Colyer*, 14 P. D. 48; *Milnes* v. *Foden*, 15 P. D. 105; *Re Slinn*, 15 P. D. 156.

Local Law governing Wills.

Devolution of realty.

P. 313, line 20.—As to the rule in *Doe* v. *Vardill*, see the cases cited *ante*, pp. 19, 20.

Lex domicilii.

P. 313, line 32.—After *Hernando* v. *Sawtell*, add *Re Trufort, Trafford* v. *Blanc*, 36 Ch. D. 600.

P. 314, line 19.—After *Barlow* v. *Orde*, add *Re Cliff's Trusts*, [1892] 2 Ch. 229.

Chapter II.—Who may make Wills.

Errata.

P. 335, lines 19 to 21.—The sentence from "and whether" to "*Bishop* v. *Wall*, 3 Ch. D. 194," has been misplaced, and should have been inserted after *Charlemont* v. *Spencer*, at line 12.

P. 335, line 35.—For "after" read "before."

Confirmation of will by married woman.

P. 336, line 4.—After *Willock* v. *Noble*, add *Re Cuno, Mansfield* v. *Mansfield*, 43 Ch. D. 12, C.A. The will of a married woman who pre-deceases her husband made during coverture

prior to the Married Women's Property Act, 1882, was held to be effectual without re-execution to pass separate property acquired after the Act: *Re Bowen, James* v. *James,* [1892] 2 Ch. 291.

Chapter III.—Who may be Devisees, &c.

Gifts to attesting witnesses.

P. 343, line 14.—After *Re Sharman,* add *Re Smith,* 15 P. D. 2. Where one of three witnesses to a will which had been admitted to probate, claimed in the Chancery Division a legacy given by the will, it was held that the probate was conclusive, but the case was adjourned to allow the legatee to apply to have her name omitted from the probate: *Re Faux, Jones* v. *Pursey,* W. N. 1888, p. 249; see *Re Lanceley, Beswick* v. *Lanceley,* W. N. 1889, p. 31.

A solicitor-executor who attests a will which empowers him to charge for professional services, cannot charge for such services: *Re Barber, Burgess* v. *Vinnicome,* 31 Ch. D. 665; *Re Pooley,* 40 Ch. D. 1.

Chapter IV.—What may be Devised or Bequeathed.

Time from which will speaks.

P. 351, line 7.—After *Re Ord,* add *Re Champion, Dudley* v. *Champion,* W. N. 1892, p. 170, 67 L. T. 694, 62 L. J. Ch. 60, C. A.

Contrary intention.

P. 351, line 15.—Where a testator at the date of his will, occupied the whole of a house and bequeathed to A. "my leasehold house and premises called the Anchor Inn where I now reside," and subsequently severed and let part of the house as a shop, continuing up to his death to reside in the unlet part, it was held that the will spoke from its date, so as to pass the whole of the house to A.: *Re Edwards, Rowlands* v. *Edwards,* 63 L. T. 481.

In the case of a testamentary appointment under a special power, the fact that the will is dated before the date of an appointment by deed under the power is a sufficient indica-

tion of contrary intention within s. 24, to prevent the will from speaking from the death of the testator, so as to operate as a revocation of the subsequent appointment by deed: *Re Wells' Trusts, Hardisty* v. *Wells*, 42 Ch. D. 646.

Chapter V.—Execution and Attestation.

Signature at end of will.

P. 369, line 3.—After *Re Ainsworth*, add *Re Fuller*, [1892] P. 377.

Presence of witnesses.

P. 371, line 10.—After *Wright* v. *Sanderson*, add *Wyatt* v. *Berry*, [1893] P. 5.

Position of witnesses' signatures.

P. 374, line 3.—After *Re Braddock*, add *Re Streatley*, [1891] P. 172.

Chapter VI.—Revocation.

Marriage.

P. 377, line 22.—After *Re Fenwick*, add *Re Russell*, 15 P. D. 111.

Destruction of will without testator's authority.

P. 379, line 32.—After *Haines* v. *Haines*, add *Mills* v. *Millward*, 15 P. D. 20, where *Butt*, J., expressed a doubt whether any such ratification of the destruction of a will without the testator's consent would amount to a revocation within s. 20 of the Wills Act.

Partial mutilation.

P. 380, line 11.—After *Re Woodward*, add *Re Leach*, 63 L. T. 111.

P. 380, line 26.—After *Re Brewster*, add *Cheese* v. *Lovejoy*, 2 P. D. 251, C. A.

P. 381, line 2.—After *Elms* v. *Elms*, add *Re Taylor*, 63 L. T. 230.

Loss of will.

P. 381, line 19.—After *Colvin* v. *Fraser*, add *Re Radcliffe*, 65 L. T. 165. Where a will has been executed in duplicate, and the copy known to have been retained by the testator cannot be found at his death, the presumption of law is that the document was destroyed *animo revocandi*: *Jones* v. *Harding*, 58 L. T. 60.

P. 383, line 3.—After *Giles* v. *Warren*, add *Re Thornton*, 14 P. D. 82. Destruction by mistake.

P. 384, *ad fin.*—After *Re Birch*, add *Tyler* v. *Merchant Taylors Company*, 15 P. D. 216; *Re Heath*, [1892] P. 253: *Re Tonge*, 66 L. T. 60. Interlineations, &c.

P. 394, line 5.—After *Farrar* v. *Winterton*, add *Re Clowes*, [1893] 1 Ch. 214, C. A. Alteration of estate.

P. 399, line 14.—Where a testator, after duly executing his will which was on five sheets, took out three sheets and substituted three fresh sheets, which he signed, but did not re-execute the will, it was held that the will could not be admitted to probate: *Treloar* v. *Lean*, 14 P. D. 49. Revocation by will.

P. 399, *ad fin.*—For an instance of the revocation of a will by a subsequent testamentary document not in terms revoking the will but disposing of the entire property of the testator, see *Re Palmer, Palmer* v. *Peat*, 58 L. J., P. 44. Inconsistent disposition.

P. 400, line 28.—After *Re Oswald*, add *Re Moore*, [1892] P. 378. Mistake.

P. 402, line 23.—After *Cottrell* v. *Cottrell*, add *M'Ara* v. *M'Cay*, 23 L. R. Ir. 138. Revoking effect of codicil.

P. 405, line 22.—A revocation by codicil of all devises and bequests whatsoever "in favour" of A. now held to revoke a special power of appointment given to him by the will: *Re Brough, Currey* v. *Brough*, 38 Ch. D. 456. Revocation of gifts in favour of donee of powers.

P. 406, line 36.—The decision in *Lord Carrington* v. *Payne*, was approved and followed by the Court of Appeal in *Re Towry's Settled Estate, Dallas* v. *Towry*, 41 Ch. D. 64, C. A. Modification of one of several devises.

P. 407, line 28.—After *Farrer* v. *St. Catherine's College*, add *Re Percival, Boote* v. *Dutton*, 59 L. T. 21, C. A. Revocation must be explicit.

P. 410, line 20.—After *Crosbie* v. *Macdoual*, add *Re Van Cutsem*, 63 L. T. 252, where a codicil not referring by date to either of two existing wills, was held to revive the earlier will by reason of reference to provisions therein contained. In *Re Turner*, 64 L. T. 805, a codicil though expressly purporting to confirm an earlier will was held not to have that effect, it appearing that the testatrix forgot the existence or misapprehended the effect of the later will. Revival by codicil of earlier will.

Mistake in date of reference.

P. 410, line 36.—After *Re Ince*, add *Re Lady Isabella Gordon*, [1892] P. 228, where, it appearing that the reference to the date of an earlier will was inserted by mistake, and that there was an intention to revive that will, the erroneous reference was omitted from the probate.

Confirmation of will ratifies codicils.

P. 411, line 24.—After *Green* v. *Tribe*, add *Re Carritt*, 66 L. T. 379.

Chapter VII.—Republication.

Republication by codicil.

P. 413, line 20.—After *Re Steele*, add *Re Smith*, *Bilke* v. *Roper*, 45 Ch. D. 632; *Re Dennis*, [1891] P. 326.

P. 414, line 18.—In *Re Blackburn*, *Smiles* v. *Blackburn*, 43 Ch. D. 75, a will made by a husband during his wife's lifetime was held to be revived by a codicil made after her death, and whereby he expressly confirmed the will, so as to execute a power given by marriage settlement to the survivor of the husband and wife.

Chapter VIII.—Restraints on Testamentary Powers.

Rule against Perpetuities.

Legal remainders.

P. 426, line 38.—In *Re Frost*, *Frost* v. *Frost*, 43 Ch. D. 246, *Kay*, *J.*, held that legal remainders are within the rule against perpetuities.

Gift to class at twenty-five.

P. 429, line 11.—After *Abbiss* v. *Burney*, add *Re Whitten*, *King* v. *Whitten*, W. N. 1890, p. 45, 62 L. T. 391; *Re Mervin*, *Mervin* v. *Crossman*, [1891] 3 Ch. 197; *Willerton* v. *Stocks*, W. N. 1892, p. 29.

Gift to class.

P. 431, line 25.—After *Blight* v. *Hartnoll*, add *Re Watkins*, *James* v. *Cordey*, 37 W. R. 609, C. A.

Alternative gift.

P. 437.—After *Beard* v. *Westcott*, add *Re Bence*, *Smith* v. *Bence*, [1891] 3 Ch. 242, C. A.

Limitation to the children

P. 439, line 31.—In *Whitby* v. *Mitchell*, 44 Ch. D. 85,

C. A., it was held that, though an estate may be limited to an unborn person for life, yet a remainder cannot be limited to the children of such unborn person, even though such limitation be expressly guarded against infringing the rule against perpetuities. A full discussion of this decision will be found in Jarman on Wills (5th edition by Robbins), Vol. I., pp. 248, *et seq.* of unborn persons.

P. 440, line 10.—A power of appointment will be void if the person to exercise the power is not necessarily ascertainable within a life or lives in being and twenty-one years afterwards: *Re Hargreaves, Midgley* v. *Tatley*, 43 Ch. D. 401, C. A., overruling, on this point, the decision of Stuart, V.-C., in *Avern* v. *Lloyd*. Power of appointment.

P. 441, line 4.—After *Hodgson* v. *Halford*, add *Cooke* v. *Cooke*, 38 Ch. D. 202.

P. 442, line 27.—Limitations in default of appointment under a power which is void for remoteness, are not necessarily invalid unless they are themselves obnoxious to the rule against perpetuities: *Re Abbott, Peacock* v. *Frigout*, [1893] 1 Ch. 54. Limitations in default of appointment.

Restraint on Accumulation.

P. 448, marg. note.—For "settlor *and* twenty-one years" read "settlor *or* twenty-one years." Thellusson Act.

The Thellusson Act has been amended by the Accumulations Act, 1892 (55 & 56 Vict. c. 58), which came into operation on the 28th June, 1892, and enacts as follows:

Sect. 1. "No person shall after the passing of this Act settle or dispose of any property in such manner that the rents, issues, profits, or income thereof shall be wholly or partially accumulated *for the purchase of land only*, for any longer period than during the minority or respective minorities of any person or persons who under the uses or trusts of the instrument directing such accumulation would for the time being if of full age, be entitled to receive the rents, issues, profits, or income so directed to be accumulated." No accumulation beyond minority.

P. 453, line 7.—After *Jones* v. *Maggs*, add *Re Parry, Powell* v. *Parry*, W. N. 1889, p. 58. Destination of released income.

P. 457, line 20.—A direction in a will that, after providing for an annuity, the surplus income shall, during the life of Improvement of land.

the annuitant be laid out in improvements and repairs of land and houses, is not a trust for accumulation within the meaning of the Thellusson Act, and is accordingly valid: *Vine* v. *Raleigh*, [1891] 2 Ch. 13, C. A.; see also *Re Mason, Mason* v. *Mason*, [1891] 3 Ch. 467.

Exception as to debts.

P. 457, line 15.—After *Tewart* v. *Lawson*, add *Re Green, Baldock* v. *Green*, 40 Ch. D. 610.

Chapter IX.—Lapse.

Substitutional gifts to executors.

P. 460, line 28.—Where a share of residue was given to A., and in case of her death, to her executors or administrators; A. died in the testator's lifetime, having bequeathed the residue of her property, which comprised the interest devolving on her representatives under the testator's will, to the testator himself; it was there held that under the special circumstances of the case, the interest given by the testator's will to the legatee, and in case of her death to her representatives, was not disposed of by his will: *Re Valdez's Trusts*, 40 Ch. D. 159.

Lapse by death of appointee.

P. 461, line 9.—After *Freeland* v. *Pearson*, add *Re Susanne's Trusts*, 47 L. J. Ch. 65.

Residuary bequest.

P. 473, line 35.—After *Crawshaw* v. *Crawshaw*, add *Re Ballance, Ballance* v. *Lanphier*, 42 Ch. D. 62; *Holgate* v. *Jennings*, 37 Sol. J. 303. See also *Re Hodgkinson, Hancock* v. *Mellor*, W. N. 1893, p. 9.

Effect of Wills Act, s. 33.

P. 481, line 9.—The rule laid down in *Olney* v. *Bates*, that s. 33 of the Wills Act does not apply to gifts to the testator's children as a class, is not affected by the fact that the class happens to consist of but one person: *Re Harvey's Estate, Harvey* v. *Gillow*, [1893] 1 Ch. 567. See also *Re Milne, Grant* v. *Heysham*, 57 L. T. 828, C. A.

Chapter X.—Conversion.

Power of sale.

P. 483, line 5.—A mere power of sale does not effect conversion: *Re Bird, Pitman* v. *Pitman*, [1892] 1 Ch. 279.

P. 483, line 12.—After *Re Raw*, add *Re Heathcote, Gilbert* v. *Aviolet*, 58 L. T. 43. Discretion to postpone.

P. 483, *ad fin.*—After *Smith* v. *Claxton*, add *Re Richerson, Scales* v. *Heyhoe*, [1892] 1 Ch. 379.

P. 490, line 25.—Where a testator empowered his trustees at their discretion to retain existing investments or to convert the same, and invest the proceeds in certain specified securities, it was held that the tenant for life was entitled to enjoy in specie unauthorised securities which were retained: *Re Sheldon, Nixon* v. *Sheldon*, 39 Ch. D. 50. See *Re Thomas, Wood* v. *Thomas*, [1891] 3 Ch. 482. Enjoyment in specie by tenant for life.

Chapter XI.—Ambiguities in Wills.

P. 508, *ad fin.*—After *Gill* v. *Bagshaw*, add *Crampton* v. *Wise*, 58 L. T. 718. Omission of donee's name.

P. 509, *ad fin.*—After *Langston* v. *Pole*, add *Re Dutton, Plunkett* v. *Simeon*, W. N. 1893, p. 65. Mistake in number.

P. 514, line 36.—Where a testator gave residue to his father for his own use and benefit, and, at his discretion for the further use and benefit of the testator's daughter, it was held that the father took the residue as trustee for himself and the daughter as joint tenants, with a discretion as to the application of the daughter's share during her minority: *Atkinson* v. *Atkinson*, 62 L. T. 735. Precatory trust.

P. 523, line 4.—In *Re Stanger, Moorsom* v. *Tate*, 64 L. T. 693, 39 W. R. 455, 60 L. J. Ch. 326, where trustees were empowered in their discretion after the death of A. to apply the whole or any part of the income or corpus of a fund for the maintenance or benefit of B., it was held that B., who died before the trust came into operation, took no transmissible interest in the fund. Discretionary trust for maintenance, &c.

P. 526, line 23.—After *Re Brake*, add *Re Bowman, Bowman* v. *Bowman*, W. N. 1891, p. 192, 8 T. L. R. 117. Mistake in name of object.

P. 528, line 17.—After *Re Ingle's Trust*, add *Re Ely, Tottenham* v. *Ely*, 65 L. T. 452. Parol evidence.

Incorporation.

P. 539, line 19.—After *Re Dallow*, add *Paton* v. *Ormerod*, [1892] P. 247.

P. 540, line 10.—After *Swete* v. *Pidsley*, add *Re MacGregor*, 60 L. T. 840.

Secret trust.

P. 543.—After *Waldegrave* v. *Tebbs*, add *Re Spencer's Will*, 57 L. T. 519, C. A. In *Re Downing's Residuary Estate*, W. N. 1888, p. 254, 60 L. T. 140, the gift was to A. and B. *absolutely*, and in full confidence that they will carry out my wishes in respect thereof; it was held that parol evidence to show a secret trust was not admissible, but that they took beneficially.

Chapter XII.—Estates by Implication.

Gift over in default of children.

P. 555, line 7.—After *Moneypenny* v. *Dering*, add *Re Rawlin's Trusts*, 63 L. T. 655, C. A.

P. 555, line 11.—After *Seymour* v. *Kilbee*, add *Scalé* v. *Rawlins*, [1892] A. C. 342.

Cross remainders.

P. 556, line 26.—After *Maden* v. *Taylor*, add *Re Roger's Estate*, *Morrell* v. *Gissing*, 41 Ch. D. 409.

Chapter XIII.—Operation of General Devise.

Leaseholds.

P. 563, line 2.—After *Prescott* v. *Barker*, add *Re Davison*, *Greenwell* v. *Davison*, W. N. 1888, p. 41, 58 L. T. 304.

Words of exception.

P. 567, line 14.—A power to any person or persons, except a specified individual or class is not a "general power" within s. 27 of the Wills Act, at all events so long as the individual or any member of the class excepted is in existence: *Re Byron's Settlement*, *Williams* v. *Mitchell*, [1891] 3 Ch. 474.

Will not referring to special power.

P. 568, line 20.—The decision in *Re Mills* was approved by the Court of Appeal in *Re Williams*, *Foulkes* v. *Williams*, 42 Ch. D. 93.

P. 568, line 32.—The settlement creating a power may prescribe conditions on the exercise of the power not being

conditions as to the mode of execution, and in such case a general devise or bequest will not, under s. 27, be a good execution of the power unless the conditions are complied with. So where a settlement gave to the settlor a general power of appointment over a sum of stock to be exercised by will or codicil expressly referring to the power, it was held by the Court of Appeal that a general bequest of his personal estate not referring to the power was invalid to pass the stock: *Phillips* v. *Cayley*, 43 Ch. D. 222; see also *Charles* v. *Burke*, *ib.* 223, n.; *Re Phillips*, *Robinson* v. *Burke*, 41 Ch. D. 417; *Re Tarrant's Settlement*, W. N. 1889, p. 146, 58 L. J. Ch. 780; *Re Davies*, *Davies* v. *Davies*, [1892] 3 Ch. 63.

Contrary intention.

P. 569, line 15.—After *Bernard* v. *Minshull*, add *Re Elen*, *Thomas* v. *McKeckine*, W. N. 1893, p. 90.

Revocation of appointment by subsequent residuary gift.

P. 570, line 12.—A testator executed a testamentary appointment under a general power; he subsequently executed a will, not referring to the appointment, but containing a residuary bequest; it was held that the will operated as a revocation of the testamentary appointment, and that the property comprised therein passed by the residuary gift: *Re Gibbes' Settlement*, *White* v. *Randolf*, 37 Ch. D. 143. A general devise will not operate by virtue of s. 27 of the Wills Act as an exercise of a power of revocation and new appointment reserved by a prior deed of appointment under a power; *Re Brace*, *Welch* v. *Colt*, [1891] 2 Ch. 671.

Chapter XIV.—Vesting of Devises and Bequests.

Remainders.

P. 572, line 24.—After *Doe* v. *Dacre*, add *Re Miles*, *Miles* v. *Miles*, 61 L. T. 359.

Devise over on marriage of widow.

P. 573, line 20.—After *Re Tucker*, add *Scarborough* v. *Scarborough*, 58 L. T. 851; *Re Dear*, *Helby* v. *Dear*, W. N. 1889, p. 170, 61 L. T. 432, 38 W. R. 31; *Re Cane*, *Ruff* v. *Sivers*, 63 L. T. 746. But the general rule will yield to clear indication of contrary intention appearing by the will: *Re Tredwell*, *Jeffray* v. *Tredwell*, [1891] 2 Ch. 640, C. A.

Gift on attaining stated age.

P. 575, line 29.—After *Jull* v. *Jacobs*, add *Re Jobson, Jobson* v. *Richardson*, 44 Ch. D. 154.

Residuary bequest.

P. 591, line 26.—After *Vawdry* v. *Geddes*, add *Re Martin, Tuke* v. *Gilbert*, 57 L. T. 471.

Effect of gift over.

P. 592, line 23.—After *Fox* v. *Fox*, add *Best* v. *Williams*, W. N. 1890, p. 189.

Chapter XV.—Executory Interests.

Erratum.

P. 595, line 36.—After the word "particular" insert the word "estate."

Contingent remainder or executory devise.

P. 596, line 17.—After *Re Bourne*, add *Blackman* v. *Fyshe*, [1892] 3 Ch. 209. See also *Dean* v. *Dean*, [1891] 3 Ch. 150.

Chapter XVI.—Gifts to Children, &c.

Children, &c., of future marriage.

P. 605, line 11.—After *Isaac* v. *Hughes*, add *Nash* v. *Allen*, 42 Ch. D. 54, where, it appearing from the terms of the gift over that children of a future marriage were intended to participate, it was held that an after-taken husband was also intended to be benefited.

Meaning of "descendants."

P. 609, line 18.—After *Re Corlass*, add *Re Flower, Matheson* v. *Goodwyn* (No. 1), 62 L. T. 216.

Meaning of "issue."

P. 609, line 29.—After *Heasman* v. *Pearse*, add *Re Smith's Trusts*, W. N. 1889, p. 164, 58 L. J. Ch. 661.

Death "without issue."

P. 627, line 26.—After *Jeffreys* v. *Conner*, add *Clay* v. *Coles*, 57 L. T. 682.

Death "without *leaving* children."

P. 627, line 34.—After *Jeyes* v. *Savage*, add *Lewin* v. *Killey*, 13 App. Cas. 783.

P. 628, line 7.—The rule that the word "leaving" may be construed "having" in order to prevent a clear previous gift from being divested has no application where it appears from the context of the will that the vested gift was intended in

some event to be defeated: *Re Ball, Slattery* v. *Ball*, 40 Ch. D. 11, C. A. Nor will the rule be readily applied where the subject matter of the gift is an annuity, which involves the notion of personal enjoyment: *Re Hemingway, James* v. *Dawson*, 45 Ch. D. 453.

Gifts to younger children.

P. 629, line 16.—The rule that a younger child will be excluded from sharing in a legacy if he succeeds as eldest surviving son to the family estates is excluded where younger children are expressly mentioned by name in the bequest: *Re Prytherch, Prytherch* v. *Williams*, 42 Ch. D. 590.

Rule in *Shelley's* case.

P. 638, line 20.—Where real estate was devised "to G. L., then at his death to go to the next heir in the name of L.," it was held that G. L. took a fee simple conditional, and that as he had no issue the estate went to the heir at law of the testator: *Re Catling's Estate*, W. N. 1890, p. 146, C. A.

Gift to heir with words of limitation added.

P. 638, line 20.—Where the limitation was to the use of E. for his life, with remainder to the use "of such person or persons as at the decease of the said E. shall be his heir or heirs at law, and of the heirs and assigns of such person or persons," it was held that the rule in *Shelley's Case* did not apply, and that E. took a life estate only with a contingent remainder in fee to the person or persons answering the description of his heir or co-heirs at law at his death: *Evans* v. *Evans*, [1892] 2 Ch. 173, C. A.

Remainder to "son."

P. 638, line 26.—After *Mellish* v. *Mellish*, add *Re Bird & Barnard's Contract*, W. N. 1888, p. 139, 59 L. T. 166.

Chapter XVII.—Gifts to Illegitimate Children.

Meaning of "children."

P. 646, line 17.—Insert reference to *Re Brown, Penrose* v. *Manning*, 63 L. T. 159.

Recognition by testator.

P. 650, line 2.—After *Dorin* v. *Dorin*, add *Re Browne, Raggett* v. *Browne*, 61 L. T. 463.

Necessary implication.

P. 650, line 11.—After *Edmunds* v. *Fessey*, add *Re Lowe, Danily* v. *Lowe*, 40 W. R. 475, 61 L. J. Ch. 415.

Existence of

P. 652, line 22.—The rule of law that where there is a gift

legitimate children.

to children, an illegitimate child cannot take where legitimate children exist or may come into existence does not apply to a gift over: *Smith* v. *Jobson*, W. N. 1888, p. 184, 59 L. T. 397.

Illegitimate children may take by name.

P. 652, line 38.—After *Owen* v. *Bryant*, add *Re Brown*, *Walsh* v. *Brown*, 62 L. T. 899, but see *Re Brown*, *Brown* v. *Brown*, 37 W. R. 472, where after a gift of legacies to three persons, each of whom was described as "my niece," the testator gave his residue to "all my nephews and nieces living at my death," it was held that an illegitimate niece who was one of the three legatees was not entitled to any share in the residue.

Gift to children as a class.

P. 653, line 11.—After *Hill* v. *Crook*, add *Re Horner*, *Eagleton* v. *Horner*, 37 Ch. D. 695.

Construction influenced by context.

P. 653, line 35.—For instances where the Court has looked into the context of the will to see what sense the testator has put on particular words of relationship so as to ascertain whether illegitimate persons were intended to be included: see *Seale-Hayne* v. *Jodrell*, [1891] A. C. 304; *Re Ashton*, [1892] P. 83.

Chapter XVIII.—Gifts to Next of Kin, Relations, &c.

Widow excluded from next of kin.

P. 658, line 28.—After *Re Parry*, add *Re Fitzgerald's Trusts*, W. N. 1889, p. 91, 61 L. T. 221, 37 W. R. 552.

Meaning of word "unmarried."

P. 660, *ad fin.*—After *Halton* v. *Foster*, add *Re King*, *Salisbury* v. *Ridley*, W. N. 1890, p. 105, 62 L. T. 789, where the words used were "unmarried and without leaving lawful issue."

Period for ascertaining class.

P. 662, line 23.—In *Re Rees*, *Williams* v. *Davies*, 44 Ch. D. 484, the gift was to the persons who would have been entitled to the estate of the deceased husband of the testatrix, if he had died intestate and without leaving any widow him surviving; *Stirling*, J., held that the persons to take must be ascertained not at the death of the testatrix, but at the death of the husband.

Relations by the half blood.

P. 664, line 25.—The presumption that a gift to relations

includes relations by the half blood may be rebutted by the context of the will: *Re Reed*, 36 W. R. 682, 57 L. J. Ch. 790.

"Representatives" how construed.

P. 667, line 10.—After *Re Best's Settlement*, add *Re Ware*, *Cumberlege* v. *Cumberlege Ware*, 45 Ch. D. 269.

Personal representatives held to mean descendants.

P. 669, line 3.—The decision in *Atherton* v. *Crowther* was followed in *Re Knowles*, *Rainford* v. *Knowles*, 59 L. T. 359.

Gift to "heirs, executors, or administrators."

P. 671, line 10.—After *Williams* v. *Arkle*, add *Re Hall*, *Hall* v. *Hall*, W. N. 1893, p. 24, C. A.

CHAPTER XIX.—JOINT TENANCY AND TENANCY IN COMMON.

Expressions creating tenancy in common.

P. 681, line 7.—As to whether under a gift to the issue of certain persons with words creating a tenancy in common the issue will take as tenants in common or as joint tenants as between themselves: see *Re Quirk*, *Quirk* v. *Quirk*, W. N. 1889, 148; *Re Smith's Trusts*, W. N. 1889, p. 164; *Re Flower*, *Matheson* v. *Goodwyn* (No. 1), 62 L. T. 216; *Re Yates*, *Bostock* v. *D'Eyncourt*, [1891] 3 Ch. 53.

Where a testator gave the residue of his real and personal estate in trust for three nephews by name and for their respective heirs, executors, administrators, and assigns; it was held that the nephews took as joint tenants for their lives with several remainders after the death of the survivor as tenants in common: *Re Atkinson*, *Wilson* v. *Atkinson*, [1892] 3 Ch. 52.

Death of object in donee's lifetime.

P. 682, line 38.—After *Butcher* v. *Butcher*, add *Re Ware*, *Cumberlege* v. *Cumberlege Ware*, 45 Ch. D. 269.

Gift to husband and wife and another person.

P. 684, line 7.—*Re Jupp* is now reported 39 Ch. D. 148. Where several names including those of a husband and wife were coupled by only one conjunction "and" occurring before the last name, it was held that the husband and wife took separate shares: *Re Dixon*, *Byram* v. *Tull*, 42 Ch. D. 306. See also *Re Smith*, *Dew* v. *Kennedy*, W. N. 1892, p. 106; *Re Gue*, W. N. 1892, p. 132, C. A.

Gift to class.

Where there was a gift to a class two members of which intermarried, it was held that the children of the marriage were entitled to two shares, one in respect of each parent: *Re Smith*, *Dew* v. *Kennedy*, W. N. 1892, p. 106.

Chapter XX.—Limitations to Survivors.

"Survivor" when read "other."

Pp. 684 to 691.—The question whether the word survivor in a will is to receive a construction in accordance with its strict and proper acceptation, or is, by a liberal interpretation, to be read as meaning "other" is one which in a work of this kind cannot receive adequate discussion. The brief treatment which it received in the 4th edition of this work will be here supplemented only by reference to Jarman on Wills (5th ed. by Robbins), Vol. II. ch. xlvii., where a full discussion of the subject will be found, and also to the following recent cases: *Askew* v. *Askew*, 58 L. T. 472, 36 W. R. 620; *Re Bowman, Whytehead* v. *Boulton*, 41 Ch. D. 525 (where *Kay*, J. in his judgment reviewed most of the authorities); *King* v. *Frost*, 15 App. Cas. 548.

Chapter XXI.—Indefinite Devises.

Gift before Wills Act.

P. 693, line 33.—After *Roe* d. *Alport* v. *Bacon*, add *Re De la Hunt and Pennington's Contract*, 57 L. T. 874.

Gift to A. for his life and the life of his heir.

P. 696, line 29.—It has been held by *North*, J., that there is nothing repugnant to law in a gift of real or personal property to A. for his own life and the life of his heir; on the death of A., his heir would be an ascertained person; and on the death of the heir of the devisee or legatee, the property would go over to the heir or next of kin of the testator, or to his residuary devisee or legatee, as the case may be: *Re Amos, Carrier* v. *Price*, [1891] 3 Ch. 159.

Operation of Wills Act, s. 28.

P. 697, line 16.—A gift of realty to devisees as joint tenants and not as tenants in common "and to the survivor of them his or her heirs and assigns" was held to make the devisees joint tenants for life with a contingent remainder in fee simple to the survivor: *Quarm* v. *Quarm*, [1892] 1 Q. B. 184.

Gift of rents and profits.

P. 697, line 28.—A gift of rents and profits or income will carry the corpus unless there are words in the will sufficient to cut down the gift to a life interest: *Coward* v. *Larkman*,

60 L. T. 1 H. L. In *Re Martin, Martin* v. *Martin*, W. N. 1892, p. 120, a gift of "the whole of the rents and profits of my business" was held to pass the fee of the house in which the testator's business was carried on.

P. 698, line 23.—After *Doe* v. *Biggs*, add *Re Allsop and Joy's Contract*, 61 L. T. 213. But see and compare *Re Lashmar, Moody* v. *Penfold*, [1891] 1 Ch. 258, C. A. Estate of trustees.

Chapter XXII.—Effect of Particular Words of Description.

P. 707, line 33.—Where a testator bequeathed to his wife all his furniture, &c., "and other effects," there being no bequests to any other person, it was held that all the testator's property passed to the wife: *Re Jupp*, [1891] P. 300. "Other effects."

In *Hall* v. *Hall* (No. 2), [1892] 1 Ch. 361, the question whether the word "effects" will, on the context, carry realty was very fully discussed in the Court of Appeal in the case of an inartificially drawn will. It was held (affirming the decision of *Fry*, L.J., sitting as an additional judge of the Chancery Division) that the use by the testator of the word "devise" in the gift in question, and, elsewhere, of the word "property," and his reference to locality in describing the effects, and other expressions in the will sufficiently indicated an intention that realty should pass by the word "effects." *Fry*, L.J., in the Court below laid down—(1) that "effects," apart from context, will not pass realty; (2) that "devise" will not of itself extend "effects" to realty; (3) that the addition of the words "of what nature, quality, or kind whatsoever" are not of themselves sufficient to extend the meaning of "effects."

P. 710, line 18.—The decision in *Cole* v. *Fitzgerald* was followed in *Re Bourne, Bourne* v. *Brandreth*, 58 L. T. 537. "Household effects."

For instances where the doctrine of *ejusdem generis* has been applied, see *Northey* v. *Paxton*, 60 L. T. 30; *Re Miller, Daniel* v. *Daniel*, 61 L. T. 365.

P. 710, *ad fin.*—After *Re Marquis of Bute*, add *Re Towry's Settled Estate, Dallas* v. *Towry*, 41 Ch. D. 64, C. A. "Heirlooms."

Chapter XXIII.—Priority of Legacies.

Abatement of legacies.

P. 712, line 10.—Where a testator gave legacies to his sons and declared that any advances should be brought into hotch-pot, the testator's estate having proved insufficient, it was held that the abatement must be upon the whole legacies and not on the balance of any legacy after deducting the advance: *Re Schweder, Oppenheim* v. *Schweder*, W. N. 1893, p. 12.

Immediate legacy to wife.

P. 712, line 33.—The decision of *Malins*, V.-C., in *Re Hardy, Walls* v. *Borwick*, was dissented from in *Cazenove* v. *Cazenove*, 61 L. T. 115, and *Re Schweder's Estate, Oppenheim* v. *Schweder*, [1891] 3 Ch. 44.

Legacy in lieu of dower.

P. 713, line 9.—A widow's right in respect of a legacy in lieu of dower to priority over other legatees is barred if the testator by his will disposes of his real estate, out of which if he had died intestate his widow would be entitled to dower: *Re Greenwood, Greenwood* v. *Greenwood*, [1892] 2 Ch. 295.

Chapter XXIV.—Intestacy.

P. 716, line 8.—By the Intestates Estates Act, 1890 (53 & 54 Vict. c. 29) it is enacted as follows:—

Intestate's estate not exceeding £500 to belong to widow where no issue.

Sect. 1. "The real and personal estates of every man who shall die intestate after the first day of September, 1890, leaving a widow but no issue shall, in all cases where the net value of such real and personal estates shall not exceed £500, belong to his widow absolutely and exclusively."

Intestate's estate exceeding £500, widow to have a charge for £500.

Sect. 2. "Where the net value of the real and personal estates in the preceding section mentioned shall exceed the sum of £500 the widow of such intestate shall be entitled to £500 part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal estates for such £500, with interest thereon from the date of the death of the intestate at four per cent. per annum until payment."

How charge to be borne as between realty and personalty.

Sect. 3. "As between the real and personal representatives of such intestate, such charge shall be borne and paid in proportion to the values of the real and personal estates respectively."

Above provision to be in addition to share of residue.

Sect. 4. "The provision for the widow intended to be made by this Act shall be in addition and without prejudice to her interest and share in the residue of the real and personal estates of such intestate remaining after payment of the sum of £500,

in the same way as if such residue had been the whole of such intestate's real and personal estates and this Act had not been passed."

Partial intestacy.

This Act does not, like the Statute of Distributions, apply to cases of partial intestacy: *Re Twigg's Estate, Twigg* v. *Black*, [1892] 1 Ch. 579.

Mode of distribution.

P. 717, line 29.—In *Re Natt, Walker* v. *Gammage*, 37 Ch. D. 517, *North*, J. held that under the Statute of Distributions the division of personal estate among descendants of an intestate, though of equal degree, is always *per stirpes*.

COMMON FORMS.

Appointment of Executors.

Substitutive executors.

P. 748, note (*h*).—Add reference to *Farnum* v. *Administrator-General of British Guiana*, 14 App. Cas. 651, P. C.

Directions as to payment of Debts, &c.

Charge of debts.

P. 758, note (*y*).—After *Trott* v. *Buchanan*, add *Re Bate, Bate* v. *Bate*, 43 Ch. D. 600.

Add at end of note a reference to *Re De Burgh Lawson, De Burgh Lawson* v. *De Burgh Lawson*, 41 Ch. D. 568, where a direction to executors to pay debts by a married woman having a general power of appointment was held to charge the debts on the appointed property.

A mere direction to pay debts is sufficient to exclude the presumption that a legacy to a creditor of an amount equal to or exceeding the debt is a satisfaction of that debt: *Re Huyshe, Bradshaw* v. *Huyshe*, 43 Ch. D. 260.

As to the distinction between a direction and a mere authority to pay debts, see *Re Head's Trustees and Macdonald*, 45 Ch. D. 310, C. A.

Specific Bequests.

Meaning of "securities for money."

P. 763, note (*g*).—The expression "securities for money" includes unpaid purchase-money of land contracted to be sold,

on which the testator has at his death, a vendor's lien: *Callow* v. *Callow*, 42 Ch. D. 550. Money invested on deposit at a Post-office will pass by a gift of money invested as "securities": *Re Saxby, Saxby* v. *Kiddell*, W. N. 1890, p. 171.

Gift of "contents of desk."

P. 770, note (*n*).—In *Re Robson, Robson* v. *Hamilton*, [1891] 2 Ch. 559, a gift of a desk "with the contents thereof," was held to pass a banker's deposit receipt, promissory notes, and other choses in action found therein at the testator's death.

Ademption of specific legacy.

P. 771, note (*z*).—In *Re Robe, Slade* v. *Walpole*, 61 L. T. 497, a legacy of £4,000, "at present secured by a mortgage of," &c., was held to have been specific and to have been adeemed by payment off of the mortgage during the testator's life.

Forgiveness of debt.

P. 775, note (*a*).—As to the admissibility of evidence of a testator's intention to forgive a debt, see *Re Applebee, Leveson* v. *Beales*, [1891] 3 Ch. 422.

Retainer of legatee's debt.

P. 776, note (*b*).—After *Stammers* v. *Elliott*, add *Re Whitehouse, Whitehouse* v. *Edwards*, 37 Ch. D. 683, where the legatee executed a creditors' deed after the testator's death.

Bequests of Business.

Gift of share of business.

P. 778, note (*b*).—As to the necessity of specifically mentioning in a bequest of a share of a business, a debt owing by the firm to the testator if intended to be included, see *Re Beard, Simpson* v. *Beard*, W. N. 1888, p. 37, 58 L. T. 629, 36 W. R. 519, 57 L. J. Ch. 887.

Book debts.

As to what "book debts" include, see *Re Stevens, Stevens* v. *Kelly*, W. N. 1888, p. 110.

Cesser of business.

Where a testator gave a business to his sons with a gift over in case they should cease to carry on the business, it was held that the conversion of the business into a limited company in which the sons continued as managers was a cesser of the business within the meaning of the will: *Re Sax, Barned* v. *Sax*, W. N. 1893, p. 104.

General Pecuniary Bequests.

Legacy to wife.

P. 792, note (*e*).—As to the decision in *Re Hardy*, see *ante*, p. 410.

P. 794, note (*j*).—After *Howard* v. *Wilson*, add *Re Drax*, *Savile* v. *Yeatman*, 57 L. T. 475. "Domestic servants."

P. 804, note (*z*).—After *Lord* v. *Bunn*, add *Re Bullock*, *Goode* v. *Lickorish*, W. N. 1891, p. 62, 64 L. T. 736, 39 W. R. 472, 60 L. J. Ch. 341. Discretionary trust.

P. 816, note (*o*).—After *Taylor* v. *Taylor*, add *Re Vickers*, *Vickers* v. *Vickers*, 37 Ch. D. 525; *Re Lacon*, *Lacon* v. *Lacon*, [1891] 2 Ch. 482, C. A. (partnership share). See also *Re Fletcher*, *Gillings* v. *Fletcher*, 38 Ch. D. 373. Ademption.

P. 820, clause 57.—For the words "now standing in my name to be transferred into," read "to be invested in." *Erratum.*

As to gifts to charities, see the Mortmain Act, 1891, considered *ante*, pp. 216 *et seq.* Charities.

Annuities.

P. 824, note (*x*).—Where a testatrix directed her trustees to purchase certain Government Annuities to be a first charge on the proceeds of sale of lands devised to them on trust for sale, it was held by *Kekewich*, J., that an annuitant who died before completion of the sale had no claim on the value of the annuity: *Re Mabbett*, *Pitman* v. *Holborow*, [1891] 1 Ch. 707. Legatee's right to value of annuity.

Leaseholds.

P. 842, note (*u*).—The rule laid down in *Palmer* v. *Fletcher* (cited Vol. V. p. 194), that under a conveyance *inter vivos* the grantee is entitled to such easements and rights as are necessary for the enjoyment of the property in the state in which it was enjoyed by the grantor at the time immediately preceding the grant, applies to gifts of land by will: *Phillips* v. *Lowe*, [1892] 1 Ch. 47. Easements.

P. 844, note (*y*).—After *Dunne* v. *Dunne*, add *Re Arbib and Class's Contract*, [1891] 1 Ch. 601, C. A. Conditions of residence.

Specific Devises.

P. 856, note (*o*).—Where a tenant for life broke a condition as to residence, it was held that, no sale having been made by the tenant for life under his statutory powers, his life estate was forfeited: *Re Haynes*, *Kemp* v. *Haynes*, 37 Ch. D. 306. Condition of residence.

Conversion and Investment.

Option to purchase.

P. 868, note.—Where a son was given an option to purchase certain property at a fixed price and the property was sold in a creditor's action for a larger sum and a surplus was left after payment of debts, it was held that the son was entitled to such surplus as against the residuary legatees: *Re Kerry, Bocock* v. *Kerry*, W. N. 1889, p. 3.

Trusts of Residuary Personalty.

Gift over on alienation.

P. 897, note (*w*).—After *Re Dugdale*, add *Corbett* v. *Corbett*, 14 P. D. 7.

Powers, etc.

Maintenance clause.

P. 910, note (*f*).—As to the insertion of express maintenance clauses, see *sub tit.* SETTLEMENTS, *ante*, p. 316.

As to discretionary trusts for maintenance of children during minority, see *Re Coleman, Henry* v. *Strong*, 39 Ch. D. 443, C. A.

Erratum.

P. 918, line 12.—The word "not" should here be omitted.

Strict Settlement.

Name and arms clause.

P. 943, line 13.—After the words "family arms" the words "either alone or" may, if desired, be inserted.

P. 943, line 17.—For "wear" read "bear."

P. 944, lines 17 *et seq.*—The proviso as to appointments should read as follows:—

"And I hereby declare that, in the event of the cesser or determination of the estates or estate of any person under the proviso in that behalf hereinbefore contained, by reason of the neglect or failure of such person (if male) or the husband of such person (if female) to comply with the proviso and direction aforesaid, any appointment or appointments which any such person may have made in favour of his or her wife or wives or husband or husbands or children respectively, by virtue of any of the powers hereinbefore contained shall be absolutely null and void [*or*, shall not be prejudiced or affected]."

Although a surname may be voluntarily assumed a royal

license is apparently necessary to confer the right to bear arms to which a person is not otherwise entitled: *Bevan* v. *Mahon-Hagan*, 27 L. R. Ir. 399.

Extension of powers under Settled Land Acts.

Pp. 956 to 962.—In using clauses 35 to 45 inclusive, reference should be made to the provisions of the Settled Land Acts, 1888 and 1889 set out and considered *sub tit.* SETTLEMENTS, *ante*, pp. 320 *et seq.* See also *ante*, p. 329.

Trustee Clauses.

Appointment of new trustees.

P. 969, note (*f*).—As to appointing separate sets of trustees, see now the Conveyancing Act, 1892, sect. 6, set out *ante*, p. 52.

Professional charges.

P. 975, clause 21.—As to this clause, see *Re Fish, Bennett* v. *Bennett*, [1893] 2 Ch. 413.

Miscellaneous Clauses.

Interest on legacy.

P. 989, note (*d*).—Interest on a legacy to a wife in lieu of dower or freebench runs from the end of the year after the testator's death; *Re Bignold, Bignold* v. *Bignold*, 45 Ch. D. 496.

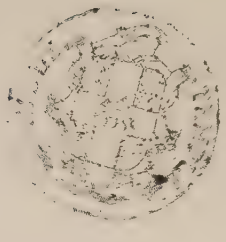
Where payment of a legacy is postponed until after the death of a tenant for life interest will be payable immediately on the death of the tenant for life: *Re Waters, Waters* v. *Boxer*, 42 Ch. D. 517.

PRECEDENTS.

PRECEDENT I.—GIFT OF WHOLE PROPERTY TO WIFE.

Appointment under special power.

P. 994, note (*a*).—The reference to *Re Batchellor* should be W. N. 1886, p. 64. See and compare *Re Blackburn, Smiles* v. *Blackburn*, 43 Ch. D. 75; *Re Cotton, Wood* v. *Cotton*, 40 Ch. D. 41. See further as to how far a general devise or bequest operates as an exercise of a power, Vol. VII., p. 568, and *ante*, p. 402. As a rule it is of course advisable to expressly refer to a special power which is intended to be exercised by the will.



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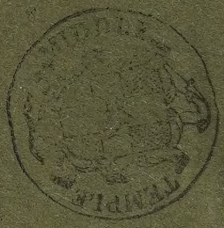
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